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TRANSCRIPT OF RECORD.

PROCEEDINGS in the District Court of the United States for the Western District of Kentucky, at a regular term begun and held at the Federal Court Hall, in the City of Louisville, Kentucky, on Monday, October 8, 1934, A. D.

Present: Hon. Chas. I. Dawson, Judge.

Thomas Henry Robinson, Jr., - - - - - - Plaintiff,

v.

United States of America, - - - - - - Defendant.

BE IT REMEMBERED, That heretofore, to-wit, on the 20th day of October, 1934, the Grand Jury of the United States of America for the Western District of Kentucky, returned an indictment which was filed with the clerk, and is in words and figures as follows, to-wit:

No. 18917.

United States District Court
Western District of Kentucky
Louisville Division

The United States of America

vs.

Thomas Henry Robinson, Jr.
Mrs. Frances Robinson,
Thomas Henry Robinson, Sr.

Indictment
Conspiracy, Lindbergh Act

Indictment

A true bill,
Wm. H. Tarvin
Foreman
Filed in open court this 20 day
of October, A. D. 1934
Lilburn Phelps, Clerk
H. M. Kresin, D. C.
Bail, $ No bail as to Thomas
Henry Robinson, Jr.,
Lilburn Phelps,
Clerk

United States of America
Set
Western District of Kentucky

In the District Court of the United States for the Sixth Judicial Circuit and Western District of Kentucky, held at Louisville, October Term, in the year of our Lord, 1934.

FIRST COUNT:

The Grand Jurors of the United States of America, impaneled and sworn, and charged to inquire in and for the said Western District of Kentucky, upon their oaths present:

That heretofore, to-wit, on or about and between the first day of September, in the year of our Lord, 1934 and the tenth day of October, in the year of our Lord, 1934, the exact date being to the Grand Jurors aforesaid unknown, and continuing to exist up to and including the 16th day of October, in the year of our Lord, 1934, in Jefferson County, Kentucky, in said district and within the jurisdiction of this court, Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., late of said district, unlawfully did then and there enter into an agreement, confederation and conspiracy to violate the provisions of Sections 408-a and 408-b of Title 18, of the United States Code Annotated, that is to say, enter into an agreement, confederation and conspiracy to seize, kidnap and carry away and to hold for ransom or reward and to trans-

port and cause to be transported and aid and abet each other in transporting in interstate commerce a person who had been unlawfully seized and kidnaped, to-wit, Mrs. Alice Stoll, who was not a minor and not carried away or held by her parents, and carry her away by means of an automobile, and hold her for ransom or reward, and that said parties did do certain overt acts toward carrying out such unlawful agreement, confederation and conspiracy, to-wit:

The said Thomas Henry Robinson, Jr., on the 10th day of October, 1934, did enter the home of the said Mrs. Alice Stoll who was not a minor and was not seized and carried away by her parents, and did seize and carry her away against her will and consent, and did transport her in interstate commerce from Louisville, in the State of Kentucky, to Indianapolis, in the State of Indiana, and did demand as a ransom or reward for her release, the sum of $50,000.00.

And the said Mrs. Frances Robinson and Thomas Henry Robinson, Sr., did, on or about and after the 10th day of October, 1934, receive said $50,000.00 in lawful money of the United States and deliver it to the said Thomas Henry Robinson, Jr.

And the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr. did conceal and aid and abet each other in concealing the said Mrs Alice Stoll from the 10th day of October, 1934 to the 16th day of October, 1934.

And the said Thomas Henry Robinson, Jr., did, on or about the 10th day of October, 1934, and continuing up to and including the 16th day of October, 1934, did strike, beat, bruise and injure the said Mrs. Alice Stoll while she was so abducted and concealed and held for ransom or reward as aforesaid, and did not release and liberate her unharmed.

Against the peace and dignity of the United States and contrary to the form of the Statute in such case made and provided.

USCA Title 18, Sec. 408-c.
Same penalty as 408-a.

SECOND COUNT:

And the Grand Jurors aforesaid upon their oaths aforesaid do further present:

That heretofore, to-wit, on or about the 10th day of October, in the year of our Lord 1934, in Jefferson County, Kentucky, in said district and within the jurisdiction of this court, Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., late of said district, unlawfully did then and there knowingly transport and cause to be transported and aid and abet each other in transporting in interstate commerce, a person who had been unlawfully seized, kidnaped, abducted and carried away and held for ransom, and said person was not a minor and had not been seized and carried away by her parents, and did not liberate said person unharmed; that is to say, at said time and place the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr. unlawfully did then and there transport and cause to be transported and aid and abet each other in transporting in interstate commerce, to-wit, in commerce from Louisville, in the State of Kentucky to Indianapolis, in the State of Indiana, Mrs. Alice Stoll, not a minor and not transported by her parents, who had been unlawfully seized, kidnaped, abducted and carried away from her home by the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., and held the said Mrs. Alice Stoll for ransom or reward, and the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr. did then and there, while the said Mrs. Alice Stoll was in their custody, beat, injure, bruise and harm and aided and abetted each other in beating, injuring, bruising and harming the said Mrs. Alice Stoll, and did not liberate her unharmed.

Against the peace and dignity of the United States and contrary to the form of the Statute in such case made and provided.

USCA Title 18, Sec. 408-a.

T. J. Sparks,
United States Attorney.

Witnesses:
Ann Woolet
E. J. Connelley
M. C. Falkner
H. F. Small
John I. Messmer
R. E. Creager
John E. Tarrant
John M. Ridge
W. L. Almon
Charles Stoli
Mrs. Berry V. Stoll
Robt. Ring
Thomas J. Conner
M. H. Purvis
A. E. Gohmann
Berry V. Stoil

ORDER APPOINTING ROBERT E. HOGAN AND J. PAUL KEITH, ATTORNEYS FOR DEFENDANT AND FIXING SEPTEMBER 30, 1943 AT 10 O'CLOCK A. M. FOR ARRAIGNMENT—Entered by Judge Shackelford Miller, Jr., September 28, 1943.

On September 28, 1943 at ten o'clock a. m., the defendant, Thomas Henry Robinson, Jr. was brought into open court in custody of the United States Marshal. He said he had not employed any attorney and would like the Court to appoint two attorneys to represent him. The Court thereupon appointed Robert E. Hogan and J. Paul Keith, Jr. as his attorneys.

The defendant objected to the appointment of Mr. Hogan on the ground that there had been some differences of opinion between him and Mr. Hogan arising out of the

Motion and Grounds for a new trial filed after the first hearing of this case.

The Court suggested that the defendant confer with Mr. Hogan and see if the matter could not be straightened out. The Court then recessed until a later hour in the day.

At 11 a. m. Court reconvened and the defendant again appeared in Court accompanied by Mr. Robert E. Hogan and announced to the Court that after discussing the matter with Mr. Hogan the appointment of Mr. Hogan and Mr. Keith was satisfactory to him.

The case was then passed for arraignment of the defendant to September 30, 1943 at 10 o'clock a. m.

AFFIDAVIT IN FORMA PAUPERIS OF THOMAS HENRY ROBINSON, JR.—Filed September 30, 1943.

State of Kentucky, }
County of Jefferson, } ss.

Thomas Henry Robinson, Jr., being first duly sworn, deposes and says:

That he is the defendant above named.

That he is a citizen of the United States by birth.

That the nature of this action is a prosecution based upon an indictment charging defendant with a violation of Title 18, U.S.C., section 408 (a).

That he is presenting the foregoing application in good faith.

That he believes that he is entitled to the rights and privileges requested in the foregoing application.

That because of his poverty, he is unable to pay for counsel or witness fees or for the costs of defending this action.

That he has no real or personal property in any way conveyed or concealed, or in any way disposed of, for his future use or benefit.

Thomas Henry Robinson, Jr.,
Defendant.

Subscribed and sworn to before me, this 28th day of September, 1943.

My commission expires September 8, 1946.

Robert E. Hogan,
Notary Public,
Jefferson County, Kentucky.

APPLICATION FOR APPOINTMENT OF COUNSEL AND FOR LEAVE TO PROCEED IN FORMA PAUPERIS—Filed September 30, 1943.

The defendant respectfully moves the Court to appoint two counsel learned in the law to represent him in the above entitled cause for the reasons set forth in the accompanying affidavit in forma pauperis.

The Court's power to appoint two counsel, and the defendant's right thereto, are conferred by Title 18, United States Code, section 563. Further power to appoint counsel is conferred upon this Court by Title 28, United States Code, section 835.

The defendant further moves the Court to allow him to proceed in forma pauperis in the above entitled cause as provided for in Title 28, United States Code, section 832, for the reasons set forth in the accompanying affidavit in forma pauperis.

Dated: Sept. 28th, 1943.

Thomas Henry Robinson, Jr.,
Defendant.

DEFENDANT'S PLEA IN ABATEMENT
—Filed September 30, 1943.

The defendant, Thomas Henry Robinson, Jr., in his own proper person, having read the indictment against him, and protesting that he is not guilty of the premises charged in the said indictment, nevertheless says that the United States of America ought not further to prosecute the said indictment against him, because he says, upon information and belief, as follows:

> That the Grand Jurors, by whom the said indictment was found and returned in this Court on October 20, 1934, were without power or jurisdiction to find or return the same, for the reason that the evidence adduced before them and submitted to them in connection with the charges against this defendant, as they are embraced and included in the aforesaid indictment, was not lawful, and that the same did not warrant or justify the finding or the return of the same; and for the further reason that the said Grand Jurors did not have submitted to them legal evidence of the matters and acts and incidents constituting the charges made against this defendant as they are included in the said indictment;

and upon information and belief, the defendant above named does hereby set forth and allege the following:

That the United States of America charges that the defendant did knowingly transport in interstate commerce a Mrs. Alice S. Stoll who had been unlawfully kidnaped and held for ransom, and that the defendant did not liberate said person unharmed;

That in support of the charge by the United States of America before the Grand Jurors that the defendant did not liberate Mrs. Alice S. Stoll unharmed from such alleged kidnaping and confinement, the United States of America did not produce or offer to or before the Grand Jurors any lawful or other evidence whatsoever;

That the United States of America did not offer to or before said Grand Jurors the testimony of Mrs. Alice S.

Stoll, or of any other person, to show that she was not liberated unharmed at the termination of the period during which the United States of America charges that the defendant held her for ransom, and that Mrs. Alice S. Stoll did not testify that she was harmed or injured in any way at the time of her alleged liberation;

That this defendant states of his own knowledge that Mrs. Alice S. Stoll was unharmed and of, and in, sound physical condition on October 16, 1934, the date on which the United States of America charges that the said Mrs. Alice S. Stoll was liberated from unlawful kidnaping and confinement; and he says that on said date she bore no scalp wounds or abrasions, or evidences of any injury whatsoever to her head or to any part of her body or person whatsoever;

That upon information and belief, this defendant states that on the morning of October 16, 1934, following defendant's departure from the apartment on North Meridian Street, Indianapolis, Indiana, where the said Mrs. Alice S. Stoll was alleged to have been unlawfuly confined, the said Mrs. Alice S. Stoll and this defendant's wife, Mrs. Frances A. Robinson, remained in the apartment eating and engaging in conversation, until sometime in the afternoon of the same date, at which time the said Mrs. Alice S. Stoll and defendant's wife left the apartment and walked to the home of a Rev. Clegg, a relative of Mrs. Stoll; that the Rev. Clegg drove Mrs. Stoll and defendant's wife toward Louisville, but were intercepted on the way by agents of the Federal Bureau of Investigation; that at no time did Mrs. Alice S. Stoll complain of any injury or illness; that after Mrs. Stoll reached Louisville, her husband, Mr. Berry V. Stoll, stated to the press that his said wife was "all right"; that Mrs. Alice S. Stoll later stated that she had been well treated by this defendant during the period of the alleged confinement;

That upon information and belief this defendant states that the indictment should be quashed; that the said Mrs. Alice S. Stoll was sound and unharmed at the time of her alleged liberation; that therefore this case is not one in which the death penalty can be imposed;

Defendant's Plea in Abatement

That said indictment should be quashed for the further and additional reason that the indorsement on said indictment, a necessary part of said indictment, and Counts First and Second therein, and each of them, charge this defendant and Thomas Henry Robinson, Sr., and Mrs. Frances Robinson with conspiracy to do certain acts, therein named, in violation of law, and against the peace and dignity of the United States of America;

That said Thomas Henry Robinson, Sr., and said Mrs. Frances Robinson were tried, and acquitted, by a jury of this court duly sworn and empaneled to try the same, and that following said acquittal the Judge of this said Court caused to be entered upon the records of this Court an order adjudging that said Thomas H. Robinson, Sr., and Mrs. Frances Robinson to be not guilty as charged in the indictment, or in either count thereof;

That by reason of the aforesaid the United States of America ought not further to prosecute the said indictment against this defendant.

All the foregoing to the manifest injury and prejudice of the said Thomas Henry Robinson, Jr., and all the foregoing the said Thomas Henry Robinson, Jr., is ready to verify.

Wherefore, the said Thomas Henry Robinson, Jr., prays judgment of the said indictment; that the same may be quashed and dismissed, and further whether the United States ought to or can prosecute him in the premises, and that he may be discharged thereof.

Thomas Henry Robinson, Jr.,
Defendant Pro Se.

State of Kentucky, }
County of Jefferson, } ss.

Thomas Henry Robinson, Jr., being first duly sworn, deposes and says, that he is the defendant in the above entitled action; that he has read the foregoing plea in abatement and knows the contents thereof, and that same is true of his own knowledge, except as to the matters therein

stated to be alleged on information and belief, and that as to those matters he believes them to be true.

Thomas Henry Robinson, Jr.,
Defendant Pro Se.

Subscribed and sworn to before me this 30th day of September, 1943, by Thomas Henry Robinson, Jr.
My commission expires September 8, 1946.

Robert E. Hogan,
Notary Public,
Jefferson Co., Ky.

Notice of filing accepted:

Eli H. Brown, III
United States District Attorney
9/30/43

ORDER ASSIGNING PLEA IN ABATEMENT FOR ARGUMENT OCTOBER 6, 1943 AT 10 O'CLOCK A. M.—Entered by Judge Shackelford Miller, Jr., September 30, 1943.

Eli H. Brown, III, United States District Attorney and J. D. Inman, Assistant United States District Attorney appeared for the United States and the defendant appeared in open court in person and with his counsel, Robert E. Hogan and J. Paul Keith, Jr. He was asked by the court if he intended to make any claim that he was mentally incompetent now and replied that he did not intend to make any such claim. Both he and his counsel, Mr. Hogan also stated that no such claim would be made but he supplemented this statement with the additional one that a plea would be made that at the time the indictment was returned herein and before that, that he was mentally incompetent.

He then in person and through his counsel filed written application for the appointment of two attorneys, and that he be allowed to proceed and defend this case in forma pauperis as he was without funds. He then filed a Plea in Abatement. Mr. Keith then asked the Court to permit him to withdraw as one of the counsel for the defendant, and the Court asked the defendant if he still wanted two attorneys appointed to defend him, to which he replied that one would do now and later on if any condition arose which necessitated the appointment of another counsel to assist Mr. Hogan he would ask for it.

Mr. Keith was allowed to withdraw as counsel upon the consent of the defendant. The Plea in Abatement was passed for argument to October 6, 1943 at 10 o'clock a. m.

UNITED STATES MOTION FOR THE APPOINTMENT OF PSYCHIATRISTS—Filed October 5, 1943.

Comes the United States by counsel, and calls to the attention of the Court the fact that in open court on Thursday, September 30, 1943 the defendant Thomas Henry Robinson, Jr. in person and by his counsel Robert E. Hogan, stated to the Court that he was making no contention of being of unsound mind at this time, but that it would be contended that the defendant Robinson was of unsound mind on October 10, 1934, the date of the kidnaping of Mrs. Alice Speed Stoll.

The Court's attention is further directed to the decision of the Honorable Michael J. Roche, United States District Judge of the Northern District of California, rendered August 9, 1943, wherein it is stated that;

> "An insane person cannot plead, nor can he be sentenced. The court was then under a duty to determine petitioner's mental condition before accepting plea."

The Court is informed that counsel for the United States can envision a situation where at some future time, if a jury returns a verdict of guilty on the indictment heretofore returned, that the defendant Thomas Henry Robinson, Jr. can again apply for a writ of habeas corpus on the grounds that at the time he entered a plea of not guilty or a plea of guilty that he did not have sufficient mental capacity to enter a plea of any kind.

The Court is therefore moved to appoint four eminent psychiatrists to examine the said Robinson and make a report to the Court of his mental condition at this time prior to the acceptance by the Court of any plea from the said Robinson.

Eli H. Brown, III,
United States Attorney.

October 4, 1943.

UNITED STATES MOTION TO STRIKE PLEA IN ABATEMENT—Filed October 5, 1943.

Came the United States by counsel and moves the Court to strike the plea in abatement heretofore filed by the defendant, Thomas Henry Robinson, Jr. on the following grounds:

1. That it does not state facts sufficient to constitute a plea in abatement.

2. That it alleges on knowledge facts which the Court will take judicial notice the defendant Thomas Henry Robinson, Jr., cannot know, and fails to state the source of information upon which the allegations are founded.

3. That the plea in abatement is not well taken under the law as made and provided herein.

There are attached hereto and made a part hereof of this motion to strike the affidavit of Capt. John I. Messmer, United States Army; the affidavit of Mrs. Alice Speed Stoll,

the affidavit of Berry V. Stoll and the affidavit of Honorable Claude Hudgins, who on October 20, 1934 was Assistant United States Attorney for the Western District of Kentucky at Louisville, and was in full charge of the presentation of the Government's case before a grand jury duly impaneled to inquire into all the facts surrounding the kidnaping of Mrs. Alice Speed Stoll, said affidavits being Exhibits "A", "B", "C", and "D".

Eli H. Brown, III,
United States Attorney.

October 4, 1943.

AFFIDAVIT OF JOHN I. MESSMER.

Comes your affiant John I. Messmer, who states that he is at present a Captain in the Army of the United States, at Fort Knox, Kentucky. That during the period October 1, 1934 to October 30, 1934 he was a Sergeant of Police, Louisville Police Department, Louisville, Kentucky.

Your affiant further states that he appeared before the United States Grand Jury at Louisville, Kentucky on October 20, 1934, and being first duly sworn, testified as follows:

That in the late afternoon of October 10, 1934 he received a call that Mrs. Alice Stoll had been kidnapped. That he immediately proceeded to the home of Mrs. Stoll on Lime Kiln Road, Jefferson County, Kentucky, and was one of the first police officers to arrive at the scene of the crime. That he recovered at the scene of the crime, one screw driver, one piece of pipe approximately 18 inches long, wrapped in brown paper, a piece of adhesive tape, one table knife and three pieces of covered flexible wire. That he also saw and examined the ransom note left by the defendant Thomas Henry Robinson, Jr., in the home of Mrs. Stoll. That he received said ransom note and later

delivered same, together with other items of evidence above incorporated, to a special agent of the Federal Bureau of Investigation, United States Department of Justice.

That he made an examination of the home of Mrs. Stoll and particularly of a bedroom in the Stoll home. That he saw on the bed and on the pillowcase on the pillow on the bed in said bedroom in the home of Mrs. Stoll blood that had recently been spilled.

John I. Messmer.

Subscribed and sworn to before me by John I. Messmer this 1st day of October, 1943.

W. T. Beckham,
Clerk, U. S. District Court.
By S. G. Connaughton,
Deputy Clerk.

(Seal)

"Exhibit A."

AFFIDAVIT OF MRS. ALICE SPEED STOLL.

Comes your affiant, Mrs. Alice Speed Stoll, and states that she appeared before the United States Grand Jury at Louisville, Kentucky on October 20, 1934, and after first being duly sworn, testified that on October 10, 1934 she was kidnapped by a man she later ascertained to be Thomas Henry Robinson, Jr. That prior to the time she was forced from her home she was given two severe blows on her head, which resulted in the loss of a good deal of blood. That she was placed in a car and taken to a city that she later learned to be Indianapolis, and remained in an apartment in that city in the custody and under the control of the kidnaper.

That during that stay on many occasions her wrists were bound, her mouth was taped and she was locked in a

closet at all times that the kidnaper was absent from the apartment.

That she was released on October 16, 1934 upon the payment to the kidnaper of $50,000 of ransom money. That at the time of her release she was suffering from the wounds that she had been dealt and from the treatment she had undergone. That thereafter and for a long period of time it was necessary to have her wounds treated; and your affiant further states that she is still suffering from the effects of one of the blows dealt with an iron pipe by the kidnaper above her right ear and that her hearing has been impaired permanently as a result of said brutal and severe blow. That at the time of her release she was suffering bodily harm inflicted upon her at the time of the kidnaping and during the period of her captivity, and that she was only released upon the payment of the said $50,000 ransom as demanded by the kidnaper on pain of her death. That during said captivity on many and divers occasions said kidnaper threatened her with great bodily harm and threatened to kill her if she made any attempt to escape.

Mrs. Alice Speed Stoll.

Subscribed and sworn to before me by Mrs. Alice Speed Stoll this 4th day of October, 1943.

(Seal) Alice E. Spahn,
Notary Public, Jeff. Co. Ky.

My com. expires 1-6-47.

"Exhibit B."

AFFIDAVIT OF BERRY B. STOLL.

Comes your affiant, Berry D. Stoll, and states that he is a resident of Louisville, Jefferson county, Kentucky.

Your affiant further states that he appeared before the United States Grand Jury, Louisville, Kentucky, on October 20, 1934, and being first duly sworn, among other things testified as follows:

That he returned to his home on Lime Kiln Road late in the afternoon of October 10, 1934. When he arrived at his home, he found that his wife, Mrs. Alice Speed Stoll, had been kidnapped, and that there was discovered by him a ransom note; that he had found the ransom note and obtained same in his possession until he delivered it to an officer of the Louisville Police Department. That in his testimony before the Grand Jury he described the ransom note; described in detail the condition of the guest room in his home, from which Mrs. Stoll had been taken; and further testified that, on the bed in the guest room, there was recently-spilled blood.

Affiant further states that he testified that, on the next and succeeding days, he arranged to have the necessary amount of ransom in the amount of Fifty Thousand Dollars ($50,000.00) made available to carry out the directions of the kidnapper and to effect the delivery of the Fifty Thousand Dollars ($50,000.00) to Thomas H. Robinson, Sr., the intermediary mentioned in the kidnap note.

Your affiant further states and testifies that, after raising the ransom and after preparation for the delivery of the ransom, he waited at his home on Lime Kiln Road, on October 16, 1934, until his wife, Alice Stoll, was returned by agents of the Federal Bureau of Investigation.

(Signed) Berry V. Stoll.

Subscribed and sworn to before me by Berry D. Stoll this 4th day of October, 1943.

(Seal) Alice E. Spahn,

Notary Public, Jefferson county, Ky.

My commission expires:
Jan. 6, 1947.

"Exhibit C."

AFFIDAVIT OF CLAUDE HUDGINS.

Comes your affiant, Claude Hudgins, and states that at present he is an attorney in the City of Louisville, with offices in the Kentucky Home Life Building. That during the period up to and including October 30, 1934 and for many years prior thereto he was an Assistant United States Attorney for the Western District of Kentucky, at Louisville, Kentucky.

Your affiant further states that he was in charge of the presentation of all evidence that was presented to the duly impaneled United States Grand Jury held at Louisville, Kentucky on October 20, 1934, at which time the Grand Jury heard evidence and inquired into all facts surrounding the kidnaping of Mrs. Alice Speed Stoll. Your affiant further states that all witnesses were duly sworn, and the witnesses that appeared were as follows:

John E. Tarrant, attorney, Kentucky Home Life Building, who testified as to the delivery of the ransom money package to the Railway Express Agency, Louisville, Kentucky, on October 12, 1934 at about 1:30 A. M., it being delivered by him to John M. Ridge, agent, Railway Express Agency.

John M. Ridge—Your affiant further says that John M. Ridge testified of the receipt by him of the ransom money package. That he accompanied said package from Louisville, Kentucky to Nashville, Tennessee on October 12, 1934 and that he delivered the package to W. L. Almon, maanger, Railway Express Agency.

W. L. Almon, manager, Railway Express Agency, Nashville, Tennessee testified that he received said package from J. M. Ridge at Nashville, Tennessee on October 12, 1934, and delivered the package to Thomas Henry Robinson, Sr. at Nashville, on October 15, 1934.

Your affiant further states that R. Creager, an officer of the Louisville Police Department, appeared and testified that he received the original ransom note on October 10, 1934 from Berry V. Stoll, and delivered same to John I. Messmer, of the Louisville Police Department. That

said ransom note demanded the payment of $50,000. and if the money was not paid Mrs. Stoll would be killed.

Affiant further states that John I. Messmer appeared and testified that he received the ransom note from Robert Creager and introduced a photograph of the ransom note that he had made and read the said ransom note to the Grand Jury.

Your affiant further states that Berry V. Stoll appeared and testified as to the finding of the ransom note on the bed where his wife had been struck. That there were spots of blood on the bed that had recently been spilled. Said Berry V. Stoll further produced $470.00 of the ransom money turned over to him by his wife after she had obtained the same from Mrs. Thomas Henry Robinson, Jr. in the vicinity of Scottsburg, Indiana.

Your affiant further states that Mrs. Alice Speed Stoll appeared and testified that on October 10, 1934 she was kidnapped by Thomas Henry Robinson, Jr., after having been brutally struck twice with a lead pipe on and about her head, causing her to lose a great deal of blood. She testified her hands were bound with wire and that she was placed in the bottom of a car and taken to a city which she later learned to be Indianapolis. That she was held captive for a period of six days and that on numerous and different occasions during that captivity her hands were tightly bound, her mouth was gagged and she was locked in a closet in the apartment in Indianapolis. That at the time of the payment of the ransom money to the kidnapper by his then wife, Mrs. Frances Robinson, she was released, suffering from the severe beating that she had received. That it was necessary that she have and she did have medical attention. That said wounds were not healed at the time of her release and that up to the time of her testimony she was suffering great pain and injury as a result of the brutal treatment and wounds she had received from Thomas Henry Robinson, Jr.

Your affiant further states that Melvin H. Purvis, a special agent, Federal Bureau of Investigation, appeared and testified that he had seen Mrs. Thomas Henry Robin-

son, Jr. turn over to Mrs. Berry V. Stoll, the victim, $470, being part of the ransom money, while riding in a car in the vicinity of Scottsburg, Indiana. That Mr. Purvis found Mrs. Stoll, Dr. and Mrs. Clegg and Mrs. Robinson, Jr. in a Studebaker sedan automobile on a highway in the vicinity of Scottsburg, Indiana. That Mrs. Stoll was taken by Mr. Purvis from the vicinity of Scottsburg and taken to her home on Lime Kiln Road, Jefferson County, Kentucky.

Your affiant further states that Anna Woolet appeared and testified that on October 10, 1934 she was a maid in the home of Mrs. Stoll. That the kidnapper had forced her at the point of a gun to take him to Mrs. Stoll's room. That the kidnapper had said that he was going to kidnap Mrs. Stoll and when Mrs. Stoll resisted and attempted to take the gun from the kidnapper, that the said Thomas Henry Robinson, Jr., brutally struck her two severe blows on the head with an iron pipe, causing blood to be spilled on the bed and pillowcase in the guest room at Mrs. Stoll's home. That Mrs. Stoll's wrists were bound tightly with wire and that she, Anna Woolet, was bound to prevent her escaping and giving an alarm.

Claude Hudgins.

Subscribed and sworn to before me by Claude Hudgins this 4th day of October, 1943.

(Seal) James P. Miller,
Notary Public Jeff. Co. Ky.

My commission expires
February 28, 1947.

"Exhibit D."

MEMORANDUM OF AUTHORITIES, ON GOVERNMENT'S MOTION TO STRIKE—Filed October 5, 1943.

In support of the Government's motion to strike plea in abatement heretofore filed, the Court is informed that the United States will rely on the principles enunciated in the following listed cases:

Olmstead v. United States, 19 Fed. (2d) 842
Olmstead v. United States, 277 U. S. 438
Shreve v. United States, 77 Fed. (2d) 2
Walker v. United States, 93 Fed. (2d) 383
United States v. Standard Oil Company, 154 Fed. 728
United States v. Silverthorne, 265 Fed. 759
United States v. Goldman, 28 Fed. (2d) 424
United States v. Rintelen, 235 Fed. 787
United States v. Jones, 16 Fed. Supp. 135
Craven v. United States, 62 Fed. (2d) 261
Nevin v. United States, 199 Fed. 831.

Eli H. Brown, III,
United States Attorney.

October 5th, 1943

ADDITIONAL MEMORANDUM OF AUTHORITIES ON GOVERNMENT'S MOTION TO STRIKE—Filed October 5, 1943.

In opposition to that portion of the defendant's plea in abatement dealing with the acquittal of Robinson, Sr., and Mrs. Robinson, I call to the attention of the Court the following cases which are conclusive against defendant's contention:

Gozner v. United States, 9 Fed. (2d) 603
United States v. Yusen, 2 Fed. (2d) 163
Kelly v. United States, 258 Fed. 392
Dane v. United States, 18 Fed. (2d) 811
Grove v. United States, 3 Fed. (2d) 965
Chiaravalotti v. United States, 60 Fed. (2d) 192.

Eli H. Brown, III,
United States Attorney.

October 5, 1943.

DEFENDANT'S MOTION TO BE PERMITTED TO INQUIRE INTO PROCEEDINGS AND EVIDENCE BEFORE GRAND JURY—Filed October 6, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., in person and by counsel, and moves the court for an order permitting and allowing the defendant to inquire into the proceeding and evidence of the Grand Jury which returned the indictment in this said case on October 20, 1934, for the purpose of establishing whether or not any witness testified whether or not Alice S. Stoll was liberated unharmed at the time set out in the said indictment; and to permit this defendant to inspect the minutes of said Grand Jury, and to procure testimony and affidavits from said Grand Jurors and witnesses who testified before said

Grand Jury as to whether or not any person whatsoever testified whether or not the said Mrs. Stoll was liberated unharmed at the time specified in said indictment; and permit this defendant to use such information and affidavits thus obtained in support of his Plea in Abatement.

Thomas Henry Robinson, Jr.,
Defendant pro se.
Robert E. Hogan,
Counsel for Defendant.

AFFIDAVIT OF ROBERT E. HOGAN, ATTORNEY FOR DEFENDANT—Filed October 6, 1943.

Affiant, Robert E. Hogan, states that he is a practicing attorney of Louisville, Kentucky, that he was appointed by the Judge of this Court as counsel for the defendant, Thomas Henry Robinson, Jr., and that this affiant is now the duly appointed and acting said attorney for said defendant.

Affiant further states that Claude Hudgins on and prior to October 20, 1934, was the duly appointed and acting Assistant United States District Attorney for the United States District Court for the Western District of Kentucky; that said Claude Hudgins as such Assistant United States Attorney introduced each and all of the witnesses in the above styled case who testified before the Grand Jurors which later returned the indictment in this said case, and was present before said Grand Jury during all of the time evidence was presented before that said body on October 20, 1934, in this said case.

Affiant further states that on Thursday, September 30, 1943, said Claude Hudgins volunteered to this affiant the fact that he, the said Hudgins, had presented the evidence in this case to the said Grand Jury which later re-

turned the said indictment and said Claude Hudgins on said September 30, 1943, when asked by this affiant whether or not Mrs. Alice S. Stoll, or any other witness, had testified before said Grand Jury as to whether or not Mrs. Alice S. Stoll was liberated unharmed, as is alleged and charged in the said indictment in this case and admitted to this affiant that neither Mrs. Stoll nor any other witness had testified before said Grand Jury on the physical condition of said Alice S. Stoll at the time she was allegedly liberated as set out in said indictment; that said information was given freely and voluntarily by said Claude Hudgins and at a time before he knew or had been advised that the defendant in this said case was going to claim in his plea in abatement that no person whatsoever testified to or before said Jury on said question, and that no lawful or competent evidence on such point was introduced to or before said Grand Jury.

In Testimony Whereof, witness the signature of this affiant this 5th day of October, 1943.

Robert E. Hogan,
Affiant.

Subscribed and sworn to before me this 5th day of October, 1943, by Robert E. Hogan.

My commission expires July 15, 1945.

Harry P. Embs,
Notary Public,
Jefferson County, Kentucky.

(Seal)

MEMORANDUM OF DECISIONS TO BE RELIED UPON BY DEFENDANT IN SUPPORT OF THE PLEA IN ABATEMENT—Filed October 6, 1943.

U. S. v. Parker, 103 F. 2d 857;
Nanfito v. U. S., 20 F. 2d 376;
May v. U. S., 236 F. 495;
Brady v. U. S., 24 Fed. 2d 405;
McKinney v. U. S., 199 Fed. 25.

Robert E. Hogan,
Counsel for the Defendant.

ORDER OVERRULING MOTION TO PROCURE AFFIDAVITS FROM GRAND JURORS—Entered by Judge Shackelford Miller, Jr., October 6, 1943.

This cause coming on to be heard on the motion by the defendant to allow the defendant to inquire into the proceedings and evidence of the Grand Jury which returned the indictment in this case on October 20, 1934 and to permit this defendant to inspect the minutes of said grand jury and to procure testimony and affidavits from said Grand Jurors and witnesses, and the court being sufficiently advised, and it appearing from statement of the United States Attorney that no transcript of any evidence was taken before said Grand Jury on October 20, 1934, and it further appearing by affidavits filed as Exhibits "A," "B," "C" and "D," attached to and made a part of the motion to strike heretofore filed, wherein it affirmatively appears that competent evidence to sustain the charge laid in the indictment was heard before said Grand Jury, and it further appearing that no basis or foundation has been shown to the court of any incompetent or prejudicial evidence being introduced before said Grand Jury, and it further appearing from the testimony in open

court of Honorable Claude Hudgins, then Assistant United States Attorney, that competent and legal evidence was presented before said Grand Jury, and counsel for the defendant having declined to produce or offer any affidavits or other proof other than the affidavit of the defendant Thomas Henry Robinson, Jr. and his own affidavit.

It Is Ordered that said motion to procure testimony and affidavits from said Grand Jurors be and is hereby overruled, to all of which defendant by counsel objects and excepts.

MOTION FOR A RULE TO COMPEL UNITED STATES TO REPLY TO PLEA IN ABATEMENT—Filed October 6, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., in person and by counsel, and moves the Court for a rule to issue against the plaintiff, United States of America, to show cause, if any it has or can, why it should not be compelled to reply to the Plea in Abatement filed by the defendant in this action.

Thomas Henry Robinson, Jr.,
Defendant Pro Se.

Robert E. Hogan,
Counsel for Defendant.

ORDER FOR RULE TO ISSUE AND ADJUDGING MOTION TO STRIKE SUFFICIENT ANSWERS TO MOTION FOR RULE—Entered by Judge Shackelford Miller, Jr., October 6, 1943.

This cause coming on for hearing on motion for a rule by the defendant in person and by counsel to require the United States of America to show cause, if any it has or can, why it should not be compelled to reply to the plea in abatement filed by the defendant, and the court being sufficiently advised,

It Is Ordered that the rule issue; and it further appearing that the United States has heretofore filed a motion to strike the plea in abatement supported by affidavits, being Exhibits "A," "B," "C," and "D," to which reference is made herein,

The court Orders, Adjudges and Decrees that said motion to strike, supported by affidavits, be and is hereby declared sufficient to answer said motion for a rule, to which counsel for defendant objects and excepts.

DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S MOTION FOR THE APPOINTMENT OF PSYCHIATRISTS—Filed October 6, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., in person and by counsel, and moves the Court for an order striking the motion of the plaintiff, United States of America, for the appointment of Psychiatrists to examine the defendant and make a report to the Court of his mental condition at this time and prior to the acceptance by the Court of any plea from the said Thomas Henry Robinson, Jr., on the following grounds:

1. That there is no basis for the appointment of any Psychiatrists to inquire into his mental condition.

2. Because the said defendant has expressly waived his rights to rely upon present insanity.

3. That the motion of the plaintiff is not well taken under the law as made and provided in such cases.

4. Because in open court on Thursday, September 30, 1943, the defendant, Thomas Henry Robinson, Jr., in person and by counsel duly appointed to represent him, and at that time represented him, admitted that said defendant, Thomas Henry Robinson, Jr., is now sane.

5. Because it has already been determined by the United States District Court for the Northern District of California in a proceeding in which the defendant Thomas Henry Robinson, Jr. and James A. Johnson, Warden United States Penitentiary, Alcatraz, California, an agent, servant and employee of the plaintiff, United States, were parties thereto, that said Thomas Henry Robinson, Jr. is now sane, that said determination is res judicata of that fact, and the plaintiff is now estopped by reason of said facts to question this defendant's sanity or insanity at this time.

Thomas Henry Robinson, Jr.,
Defendant Pro Se.

Robert E. Hogan,
Counsel for Defendant.

ORDER OVERRULING MOTION TO STRIKE MOTION BY THE UNITED STATES FOR THE APPOINTMENT OF PSYCHIATRISTS—Entered by Judge Shackelford Miller, Jr., October 6, 1943.

This cause coming on to be heard on the motion of the United States for the appointment of psychiatrists to render a report to the court prior to the acceptance of any plea from the defendant Robinson and on the motion to strike the United States' motion for the appointment of psychiatrists, and it appearing that a contention has been raised as to the defendant's sanity, and the court being desirous of medical testimony as to the sanity or insanity of the defendant Robinson, in addition to such different and other evidence as the court in its discretion may consider,

It Is Ordered and Adjudged that the motion to strike the United States' motion for the appointment of psychiatrists be and is hereby overruled, and the motion of the United States for the appointment of psychiatrists to render a report to the court prior to the acceptance of any plea from the defendant Robinson is sustained, to all of which counsel for defendant objects and excepts.

DEFENDANT'S MOTION TO DISMISS
—Filed October 6, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., in person and by counsel, and moves the Court for an order dismissing the indictment and prosecution in this case because the right to a speedy trial guaranteed by the Sixth Amendment to the United States Constitution, guaranteeing that right, has been violated by the delay of some seven or more years, during all of which time the defendant was in the custody of the United States at all times and available for trial.

Thomas Henry Robinson, Jr.,
Defendant Pro Se.
Robert E. Hogan,
Counsel for Defendant.

ORDER OVERRULING MOTION TO DISMISS—Entered by Judge Shackelford Miller, Jr., October 6, 1943.

This cause coming on to be heard on the motion to dismiss heretofore filed, wherein it is stated that said indictment should be dismissed "because the right to a speedy trial guaranteed by the Sixth Amendment to the United States Constitution, guaranteeing that right, has been violated by the delay of some seven or more years, during all of which time the defendant was in the custody of the United States at all times and available for trial," and the court being advised that from October 10, 1934 to and including May 10, 1936 the defendant Robinson was a fugitive from justice, and it further appearing that on May 13, 1936 the defendant Robinson entered a plea of guilty to count two of the indictment and was thereupon ordered imprisoned for his natural life, and it further appearing that on August 9, 1943 the Honorable Michael J.

Order Overruling Motion to Dismiss

Roche, United States District Judge for the Northern District of California, granted this defendant a writ of habeas corpus, and that no unnecessary delays have resulted,

It Is Ordered and Adjudged that said motion to dismiss be and is hereby overruled, to which counsel for defendant objects and excepts.

DEFENDANT'S MOTION TO ELECT—Filed October 6, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., in person and by counsel, and moves the Court for an order requiring the plaintiff, United States of America, to elect which of the counts in the indictment upon which it desires to prosecute this defendant.

Thomas Henry Robinson, Jr.,
Defendant Pro Se.
Robert E. Hogan,
Counsel for Defendant.

ORDER OVERRULING MOTION TO ELECT—Entered by Judge Shackelford Miller, Jr., October 6, 1943.

This cause coming on to be heard on motion by the defendant to require the United States to elect which of the counts in the indictment upon which it desires to prosecute this defendant, and it appearing that count one of the indictment, being a conspiracy count charging the defendants Thomas Henry Robinson, Sr., Mrs. Frances Robinson and Thomas Henry Robinson, Jr. with conspiring to kidnap and hold for ransom and transport from Kentucky to Indiana Mrs. Alice Speed Stoll, and it further appearing that by verdict of a jury the defendants Thomas Henry Robinson, Sr. and Mrs. Frances Robinson were acquitted, and it further appearing that on May 13, 1936 Honorable Elwood Hamilton, then United States District Judge for the Western District of Kentucky dismissed on his own motion count one of the indictment as to the defendant Thomas Henry Robinson, Jr., and it further appearing by the affirmative statement of Eli H. Brown, III, United States Attorney for the Western District of Kentucky that the Government would only prosecute count two of said indictment,

It Is Ordered and Adjudged that said motion to elect be and is hereby overruled, to which counsel for defendant objects and excepts.

DEFENDANT'S DEMURRER TO INDICTMENT

—Filed October 6, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., in person and by counsel, and demurs to the indictment herein and to each count thereof, and for grounds of said demurrer, states:

1. That the matters and things alleged in said indictment do not constitute any offense against the laws of the United States and said indictment does not contain facts sufficient to charge this defendant with the commission of an offense against the laws of the United States of America.

2. That said indictment is not sufficiently definite or certain to conform to the requirements of the Fifth and Sixth amendments to the Constitution of the United States, or to enable this defendant to properly prepare his defense.

3. That the second count of said indictment is duplicitous in that more than one separate and distinct offense is charged in said count.

Wherefore, the defendant, Thomas Henry Robinson, Jr., asks that this demurrer be sustained and that said indictment be quashed and dismissed.

Thomas Henry Robinson, Jr.,
Defendant pro se.
Robert E. Hogan,
Counsel for Defendant.

ORDER OVERRULING DEMURRER—Entered by Judge Shackelford Miller, Jr., October 6, 1943.

This cause coming on for hearing on demurrer to the indictment, and the Court being advised, upon consideration of the indictment and being of the opinion that said demurrer is not well taken,

It is Ordered and Adjudged that same be and is hereby overruled, to which counsel for defendant objects and excepts.

ORDER APPOINTING PSYCHIATRISTS—Entered by Judge Shackelford Miller, Jr., October 6, 1943.

This cause coming on to be heard, and the court having considered the motion of the United States Attorney, Eli H. Brown, III, to appoint four eminent psychiatrists to examine the said defendant Robinson and render a report to the court as to the present sanity or insanity of the said defendant, and in order for the court to be advised,

It is Ordered and the court does appoint the following psychiatrists:

Dr. W. E. Gardner, Brown Building, Louisville Kentucky;

Dr. Spafford Ackerly, 610 So. Floyd, Louisville Kentucky;

Dr. Isham Kimbell, Supt. Central State Hospital, Lakeland, Ky.;

Dr. E. E. Landis, General Hospital, Louisville, Kentucky,

to conduct such examination as they deem necessary of the defendant Thomas Henry Robinson, Jr. and to render the court a report so that the court may have for its consideration the opinion of psychiatrists in addition to such other and different facts as the court may desire to know.

ORDER OVERRULING MOTION TO FIX DEFENDANT'S BAIL—Entered by Judge Shackelford Miller, Jr., October 6, 1943.

This cause coming on for hearing on the oral motion of the defendant by his counsel in open court to fix the bail of the defendant Thomas H. Robinson, Jr., in the amount of $5,000.00, and it appearing that the defendant by his counsel, Robert E. Hogan, stated that said matter was entirely within the Court's discretion, and it appearing that said indictment charges a capital offense, and it further appearing that prior to the offense alleged in the indictment returned October 20, 1934 that the defendant Robinson had been charged with the offense of burglary, impersonating an officer and other offenses in the State of Tennessee, and it further appearing that the ransom of $50,000.00 in the kidnapping case was paid to the defendant Robinson and only a fraction thereof recovered, and it further appearing that the defendant Robinson was a fugitive from justice from October 10, 1934 to May 10, 1936, and the court being sufficiently advised,

It is Ordered that the defendant be held in the Jefferson County Jail without bond pending the trial of this cause, to all of which the defendant by counsel objects and excepts.

ORDER SUSTAINING MOTION TO STRIKE PLEA IN ABATEMENT—Entered by Judge Shackelford Miller, Jr., October 6, 1943.

This cause coming on to be heard on the Plea in Abatement heretofore filed by the defendant Thomas Henry Robinson, Jr., and the Motion to Strike Plea in Abatement heretofore filed on behalf of the United States, and the Court being sufficiently advised, and having considered the Plea in Abatement and the Motion to Strike Plea in Abatement, supported by affidavits of persons who testified before the Grand Jury on October 20, 1934, and the testimony in person of Claude Hudgins, former Assistant United States Attorney in charge of the presentation of all evidence before the aforesaid Grand Jury, and it further appearing that by order entered October 6, 1943, the Court has overruled motion to procure affidavits from Grand Jurors, and it further appearing that the defendant Robinson by counsel having advised the Court that he desired to offer no additional proof than said testimony by Grand Jurors, the verified Plea in Abatement and the testimony of Claude Hudgins,

It is Ordered that the Motion to Strike Plea in Abatement be and the same is hereby sustained, to which the defendant by counsel objects and excepts.

ORDER ALLOWING DEFENDANT TO DEFEND THIS ACTION IN FORMA PAUPERIS—Entered by Judge Shackelford Miller, Jr., October 6, 1943.

The Motion of the defendant that he be allowed to proceed and defend this action in forma pauperis having been considered by the Court is sustained and he is allowed to defend this action in forma pauperis.

DEFENDANT'S WAIVER AS TO CONTENTION OF INSANITY—Filed October 6, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., in person and by counsel, and without waiving or prejudice to his right to contend that he was insane prior to, and at the time of, and for some time following the times, dates and incidents set forth and incorporated in the indictment in this said case, hereby expressly waives his right to contend or claim that he is now (at the present time) insane.

Thomas Henry Robinson, Jr.,
Defendant pro se,

_____

Counsel for Defendant.

ORDER ON FORMAL ARRAIGNMENT AND PLEA—Entered by Judge Shackelford Miller, Jr., October 13, 1943.

This cause coming on for hearing on October 13, 1943 in open court and the defendant Thomas Henry Robinson, Jr., being present in person and by counsel, Robert E. Hogan, and the United States being present by counsel, Eli H. Brown, III, United States Attorney for the Western District of Kentucky,

And it appearing that a report has been made to the presiding judge by Drs. Ackerly, Gardner, Kimball and Landis, psychiatrists previously appointed to advise the court of the mental condition of the defendant Robinson, and it further appearing that the psychiatrists unanimously had reported that in their opinion the defendant was sane, and the court having observed the bearing, the demeanor and the appearance of the said Robinson and having been fully advised, finds that at the time of said arraignment

the defendant Robinson was sane and capable of pleading to said indictment,

And said indictment having been read in full to the defendant Robinson and the court having advised him thereto, whereupon the said defendant was asked by the court what plea he desired to enter, and the defendant Robinson entered a plea of not guilty to the indictment.

The Court then informed the defendant that the case could be and would be speedily tried and that dates of November 1, 1943 or November 29, 1943 were open and the trial could start on either of said dates, whereupon the defendant in person and by counsel, Robert E. Hogan, requested the court to assign the case for trial beginning Monday, November 29, 1943.

Thereupon, the court, being fully advised, and at the request of the defendant Robinson in person and by counsel in open court assigned the case for trial on the defendant Robinson's plea of not guilty for 9:30 A. M. Monday, November 29, 1943 in the United States District Court at Louisville, Kentucky.

DEFENDANT'S MOTION FOR ORDER OF PERSONAL ATTENDANCE OF DOCTORS TO BE PAID BY UNITED STATES—Filed November 9, 1943.

Comes the defendant, Thomas H. Robinson, Jr., in person and by counsel, and moves the Court for an order of personal attendance of Doctor Leon Solomon, having offices in the Fincastle Building, Third and Broadway, Louisville, Kentucky, and of Doctor Thomas J. Crice, Starks Building, 4th and Walnut, Louisville, Kentucky, upon the trial of the above entitled cause, as witnesses for and on behalf of this defendant; and that the costs incurred by the processes and the fees of said witnesses be paid by the

United States of America, as in cases of witnesses subpoenaed in behalf of the United States.

Thomas H. Robinson, Jr.,
Defendant pro se.

Robert E. Hogan,
Counsel for Defendant.

Notice waived.
Eli H. Brown, III.

DEFENDANT'S AFFIDAVIT—Filed November 9, 1943.

Affiant, Thomas H. Robinson, Jr., states that he is the defendant in the above styled cause; that he is under indictment in the above entitled cause in the United States District Court for the Western District of Kentucky; that Doctors Leon Solomon and Thomas J. Crice are witnesses, whose evidence is material to this defendant's defense; that he expects to prove by each of them that at the time of, prior to, and subsequent to the time mentioned in the indictment in the above entitled cause, this defendant was insane, and that he at said times did not know wrong from right, and was not mentally capable, medically or legally, of committing any offense, including the offense and/or offenses set forth in the aforesaid indictment; that said doctors have offices in Louisville, Jefferson County, Kentucky, and are within the district in which the United States Court for the Western District of Kentucky is held; that they are within 100 miles of the place where the trial of this defendant is to be conducted; that this defendant is not possessed of sufficient means and is actually unable to pay the fees of said doctors; that the testimony of said witnesses is important and material and that the just and proper effect thereof cannot, in a reasonable degree be had

without their personal attendance and oral examination in court upon the trial of the above entitled cause.

Witness the signature of the affiant this 8th day of November, 1943.

Thomas H. Robinson, Jr.,
Defendant.

Subscribed and sworn to before me this 8th day of November, 1943, by Thomas H. Robinson, Jr.

My commission expires September 8, 1946.

Robert E. Hogan,
Notary Public, Jefferson
County, Ky.

(Seal)

Notice waived—Eli H. Brown III.

ORDER SUSTAINING DEFENDANT'S MOTION FOR PERSONAL ATTENDANCE OF PHYSICIANS AND PAYMENT OF THEIR FEES—Entered by Judge Shackelford Miller, Jr., November 9, 1943.

This cause having come on to be heard upon the motion of the defendant, Thomas Henry Robinson, Jr., supported by the affidavit of said defendant, filed herein, for an order of personal attendance of Doctors Leon Solomon and Thomas J. Crice and requiring them to appear upon the trial of the above entitled cause, as witnesses for and on behalf of the defendant, and that the costs incurred by the processes and that the fees of said witnesses be paid by the United States of America, as in cases of witnesses subpoenaed in behalf of the United States; and, the Court being sufficiently advised, and having considered said Motion and said affidavit, said Motion is hereby sustained, and the clerk of this court is hereby directed to issue subpoenae for Doctors Leon Solomon and Thomas J. Crice

to appear personally in Court upon the trial of this cause, commencing November 29, 1943, to testify for and on behalf of said defendant.

It is further ordered that the costs incurred by the processes and the fees of said witnesses, in a reasonable sum, to be later fixed by the Court, be paid by the United States of America, as in cases of witnesses subpoenaed in behalf of the United States.

DEFENDANT'S MOTION FOR WITNESSES AND PAYMENT OF FEES—Filed November 24, 1943.

Comes the defendant, Thomas H. Robinson, Jr., in person, and by counsel, and moves the Court for an order of personal attendance of the following witnesses:

Doctor H. B. Brackin, c/o Davidson County Poor Farm, Nashville, Tennessee;
Doctor Horace Gayden, Church Street, near 7th, Nashville, Tennessee;
Mrs. Frances Payne, c/o U. S. Employment Service, Bureau, Cotton States Building, Nashville, Tennessee;
Richard M. Atkinson, Attorney, 3rd National Bank Bldg., Nashville, Tennessee;
J. G. Lackey, Attorney, 601 Stahlman Building, Nashville, Tennessee;
Mrs. Jessie Robinson, 1211 Cedar Lane, Nashville, Tenn.,

and that the fees of said doctors, the fees, expenses, and costs or other items of expense, including the fees of the United States Marshal, at Nashville, Tennessee, incident and necessary to having said witnesses subpoenaed, pro-

cured and brought to this court to testify for and on behalf of this defendant, be paid by the United States of America.

Thomas H. Robinson, Jr.,
Defendant Pro Se.
Robert E. Hogan,
Counsel for Defendant.

DEFENDANT'S AFFIDAVIT IN SUPPORT OF MOTION FOR WITNESSES—Filed November 24, 1943.

Affiant, Thomas H. Robinson, Jr., states that he is the defendant in the above styled cause; that he is under indictment in the above entitled cause in the United States District Court for the Western District of Kentucky; that Doctors H. B. Brackin and Horace Gayden are practicing physicians, having offices in or near Nashville, State of Tennessee; that they are witnesses for and on behalf of this defendant; that said Dr. Gayden has an office at or near 7th and Church Streets, Nashville, Tennessee; and said Dr. Brackin has an office at the Davidson County Poor Farm, in or near Nashville, County of Davidson, State of Tennessee.

Affiant further states that Mrs. Frances Payne, care of U. S. Employment Service Bureau, Cotton States Building, Nashville, Tennessee; Richard M. Atkinson, Attorney, 3rd National Bank Building, Nashville, Tennesee; J. G. Lackey, Attorney, 601 Stahlman Building, Nashville, Tennessee; and Mrs. Jessie Robinson, 1211 Cedar Lane, Nashville, Tennessee, are witnesses whose evidence is material to this defendant's defense; that this defendant cannot safely go to trial without them; that this defendant expects to prove by them that at the time of, prior to, and subsequent to, the time mentioned in the indictment in the above entitled cause, this defendant was insane, medically and

legally, and that he, at and during said time, did not know right from wrong, and was not mentally capable, medically or legally, of understanding the nature or purport of his acts, or the consequences therof; and that, if he did or was able to understand wrong from right, that he was not able, because of insanity, to resist the urge or impulse to do or commit the acts mentioned in the indictment in this cause; that said witnesses are without the district in whch the United States Court for the Western District of Kentucky is held, and are not within 100 miles of the place where the trial of this defendant is to be conducted, but that, nevertheless, said witnesses, and each of them, are important and material witnesses for this defendant, and that he cannot go safely to trial without them, and that the just and proper effect of their testimony cannot, in a reasonable degree, be had without their personal attendance and oral examination in court upon the trial of the above entitled cause.

Affiant further states that he is not possessed of sufficient means, and is actually unable to pay the fees of said doctors, the fees, expenses, and costs of other items of expense, including the fees of the Marshal of the United States for the Middle District of Tennessee, located at Nashville, Tennessee, incident and necessary to having said witnesses subpoenaed, procured and brought to the court in the district wherein and whereat said trial of this defendant upon said indictment is to be held; and affiant states that, unless the said aforesaid costs incurred by the processes and the fees, and traveling expenses, and all other expenses incident to procuring and producing said witnesses personally in court upon the trial of the above entitled cause, shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpoenaed in behalf of the United States or paid by the United States in some manner, this defendant cannot go safely to trial, and will not be able to have a fair and impartial trial.

Witness the signature of this affiant this the 23rd day of November, 1943.

Thomas H. Robinson, Jr.,
Defendant.

Subscribed and sworn to before me this the 23rd day of November, 1943.

My commission expires September 8, 1946.

Robert E. Hogan,
Notary Public,
Jefferson County, Ky.

ORDER OVERRULING DEFENDANT'S MOTION FOR ORDER OF PERSONAL ATTENDANCE OF WITNESSES—Entered by Judge Shackelford Miller, Jr., November 24, 1943.

Came the defendant by counsel, Robert E. Hogan, and tendered his motion for an order of personal attendance for the following witnesses:

Dr. H. B. Brackin,
c/o Davidson County Poor Farm,
Nashville, Tennessee.

Dr. Horace Gayden,
Church Street, near 7th,
Nashville, Tennessee.

Mrs. Frances Payne,
c/o U. S. Employment Service Bureau,
Cotton States Building,
Nashville, Tennessee.

Richard M. Atkinson, Attorney,
3rd National Bank Building,
Nashville, Tennessee.

J. G. Lackey, Attorney,
601 Stahlman Building,
Nashville, Tennessee.

Mrs. Jessie Robinson,
1211 Cedar Lane,
Nashville, Tennessee.

together with the defendant's affidavit that the above witnesses are necessary to his defense and stating that he expected to prove that the defendant at the time of the commission of the offense charged in the indictment and prior thereto and subsequent was a person of unsound mind; that the said defendant is without funds to cover the expenses and fees for said witnesses and the fees of the United States Marshal for service and requested that an order be entered requesting the United States to pay said fees.

It appearing that the defendant, by counsel, stated to the Court that all witnesses covered in the motion and affidavit resided in or near Nashville, Tennessee, outside of the jurisdiction of the Western District of Kentucky, and residing more than 100 miles away to-wit: approximately 195 miles.

Wherefore, the Court having considered said motion and having asked the United States Attorney if he had any objection thereto and being sufficiently advised of the provisions of the statute applicable thereto, title 28 U.S.C.A. section 656, and it f.rther appearing that the United States Attorney stated to Robert E. Hogan, counsel for defendant, that he, the said United States Attorney, would cause a subpoena to be issued for each of said witnesses at the time requested by defendant and by his counsel,

It Is Ordered and Adjudged that motion and affidavit be and they are hereby filed, and upon consideration said motion is overruled with exception to the defendant.

ORDER FILING AFFIDAVIT OF HAROLD HALL, DEPUTY UNITED STATES MARSHAL AS TO SERVICE OF LIST OF WITNESSES AND JURORS AND THEIR ADDRESSES ON DEFENDANT AND HIS COUNSEL—Entered November 27, 1943.

Came the United States District Attorney and tendered the affidavit of Harold Hall, Deputy United States Marshal, as to service of lists of witnesses and addresses, and names and addresses of all jurors summoned to appear before the United States District Court at Louisville on November 29th and November 30, 1943, both as to the defendant in person and as to his counsel.

It is ordered that said affidavit be filed.

AFFIDAVIT OF HAROLD HALL, DEPUTY UNITED STATES MARSHAL AS TO SERVICE OF LIST OF WITNESSES AND JURORS AND THEIR ADDRESSES ON DEFENDANT AND HIS COUNSEL—Filed November 27, 1943.

Comes your affiant Harold Hall and states that he is a Deputy United States Marshal for the Western District of Kentucky.

Your affiant further avers that on Thursday, November 25, 1943, between the hours of 4:30 P. M. and 5:30 P. M., at the direction of the United States Attorney for the Western District of Kentucky, he served on and delivered to the defendant Thomas Henry Robinson, Jr., a true copy of the indictment pending in this district against the said Robinson, a complete list of the names and addresses of all witnesses who will appear at the direction of the Government to prove the said indictment and a complete list of all jurors who have been summoned to appear on November 29, 1943.

The affiant further states that on November 26, 1943 between the hours of 1:30 P. M. and 2:30 P. M., he served on the defendant Thomas Henry Robinson, Jr., at the direction and request of the United States Attorney for the Western District of Kentucky, a true and complete copy of all jurors who have been summoned to appear before the United States District Court for the Western District of Kentucky at Louisville on November 30, 1943.

Your affiant further avers that on Thursday, November 25, 1943, between the hours of 4:30 P. M. and 5:30 P. M., at the direction of the United States Attorney for the Western District of Kentucky, he served on Robert E. Hogan, counsel for Thomas Henry Robinson, Jr., by leaving at the office of said Hogan a true copy of the indictment pending in this district against the said Robinson, a complete list of the names and addresses of all witnesses who will appear at the direction of the Government to prove the said indictment, and a complete list of all jurors who have been summoned to appear on November 29, 1943.

The affiant further states that on November 26, 1943 between the hours of 1:30 P. M. and 2:30 P. M., he served on Robert E. Hogan by leaving at the office of said Hogan, at the direction and request of the United States Attorney for the Western District of Kentucky, a true and complete copy of all jurors who have been summoned to appear before the United States District Court for the Western District of Kentucky at Louisville on November 30, 1943.

Harold Hall,
Deputy U. S. Marshal.

Subscribed and sworn to before me this 27 day of November, 1943.

W. T. Beckham,
Clerk, U. S. District Court,
Western District of Kentucky.
H. W. Kresin,
Deputy Clerk.

ORDER FILING AFFIDAVIT OF HAROLD HALL, DEPUTY UNITED STATES MARSHAL AS TO SERVICE ON DEFENDANT AND COUNSEL OF LIST OF NAMES AND ADDRESSES OF UNITED STATES WITNESSES AND NAMES AND ADDRESSES OF ALL JURORS SUMMONED—Entered November 27, 1944.

Came the United States District Attorney and tendered the affidavit of Harold Hall, Deputy United States Marshal, as to service of list of witnesses and addresses, and names and addresses of all jurors summoned to appear before the United States District Court at Louisville, on November 29th and November 30, 1943, both as to the defendant in person and as to his counsel.

It is ordered that said affidavit be filed.

ORDER FOR TWO ADDITIONAL JURORS—Entered by Judge Shackelford Miller, Jr., November 29, 1943.

It appearing to the Court that this trial is likely to be a protracted one, it is

Ordered that two additional jurors be selected to serve as alternate jurors during the trial.

ORDER KEEPING JURY TOGETHER AT BROWN HOTEL, LOUISVILLE, KY.—Entered by Judge Shackelford Miller, Jr., November 29, 1943.

It appearing to the court that it is necessary in this case to keep the jury together, It Is Ordered that the jury be, during the adjournment hours of this trial, kept together at the Brown Hotel, in Louisville, Kentucky, and that all expenses, including lodging, meals and necessary expenses incident thereto for the members of the jury, for the two Deputy United States Marshals and the Special Bailiff, be paid by checks drawn on the Treasury of the United States of America by the United States Marshal of this court.

ORDER ADMINISTERING OATH TO DEPUTY MARSHALS AND SPECIAL BAILIFF IN CHARGE OF JURY—Entered by Judge Shackelford Miller, Jr., November 30, 1943.

Marion O. Cassady and Mrs. Bernadine Kearney, Deputy United States Marshals, and John Moorman, Special Bailiff, appeared in open court this day and took the following oath, which was administered by the Clerk of the Court:

> "You, and each of you, do solemnly swear that as Deputy United States Marshals and Special Bailiff, you will wait upon and guard the Jury in this case, and do and perform every act necessary and proper in the efficient discharge of your duties as such, So Help You God."

MOTION FOR DIRECTED VERDICT OF ACQUITTAL AND DISMISSAL.

Comes the defendant, Thomas Henry Robinson, Jr., by counsel and moves for a directed verdict of acquittal and dismissal of the indictment herein, because at the close of the Government's case it has wholly failed to prove the allegations charged against this defendant in said indictment.

Counsel for the Defendant.

Dec. 6, 1943.

MOTION TO STRIKE AND EXCLUDE GOVERNMENT EXHIBITS.

Comes the defendant, Thomas H. Robinson, Jr., and moves the Court for an order striking from the record and to exclude from the jury and their consideration the following Government Exhibits:

Exhibit 68—(2 sheets), later, at the suggestion of the court marked Exhibits 68-a and 68-b.

Exhibit 69—

Exhibit 33—Original Ransom Note.

Exhibit ——Outside of Envelope Containing the Original Ransom Note.

All original charts and all copies of charts and all photographs of charts, specimen photographs, and original negative of the outside of Envelope Containing the purported original ransom note.

Negative and impressions or specimens of photograph of the inside of Envelope in which was

contained the purported original ransom note.

Two photographs and all negatives of first page of purported original ransom note;

Original negative and all negative and specimen photographs of reverse side of first page of the purported original ransom note;

Two charts and all charts of Reverse side of first page of the purported original ransom note;

Two charts and all charts of the second page of the purported original ransom note;

Reverse side of second page of the purported original ransom note;

Chart No. 1—Enlargement of right thumb impression of one of the fingerprint cards;

Chart No. 1-a—Latent impression appearing on reverse side of first page of the original ransom letter.

Original and all copies of photographs and negatives of the right thumb, Government Exhibit No. 70.

Exhibit 70-a } Negatives of the outside of the envelope.
Exhibit 70-b }

Exhibit 71-a—The negatives of the outside of the envelope;

71-b—Inside of envelope;

71-c—The first page of the original ransom note;

71-d—Second page of the original ransom note;

71-e—Reverse of first page of ransom note;

71-f—Reverse of second page of original ransom note.

32 —Letter addressed to Berry V. Stoll;

30 —Envelope addressed to Miss Elizabeth McHenry;

48 —Envelope addressed to "The Custodian," etc., and a single sheet addressed to the "Custodian,"

signed in typewriter "Mr. Kennedy," etc.

47 —Envelope "Important, etc."—Pamphlet "How to Use Corona Portable, etc."

71-g;

71-h;

72-a—Letter from Mrs. Alice Stoll to Mr. Berry V. Stoll, in care of Mr. W. S. Speed;

72-b—With reference to the first page of the same letter, a chart, and the negative;

72-c—Negative of the above;

72-d, 72-e—With reference to the envelope of the same letter, an enlargement of the envelope and the negative;

72-f, 72-g—With reference to— Inside of the envelope of the same letter, an enlargement;

72-h, 72-i—With reference to the first page of the same letter, an enlargement and the negative;

72-j, 72-k—With reference to the second page of the same letter, an enlargement;

72-l, 72-m—With reference to the second page of the letter, an enlargement and the negative;

73-a, 73-b—With reference to exhibits pertaining to the letter from Mrs. Alice Stoll to Miss Elizabeth McHenry, charts;

73-c, 73-d, 73-e, 73-f—With reference to the— The envelope in which that same aforesaid letter was contained, two enlargements and another enlargement and the negative;

73-g, 73-h—With reference to the first page of the same letter from Mrs. Stoll to Miss McHenry, enlargement and the negative;

73-i*, 73-j—With reference to the reverse of the first page of the letter from Mrs. Alice Stoll to Miss Elizabeth McHenry, the enlargement, and the negative;

Motion to Strike and Exclude Government Exhibits

73-k, 73-l—With reference to the second page of the letter from Mrs. Stoll to Miss Elizabeth McHenry, enlargement and the negative;

73-m, 73-n—With reference to the second page of the letter from Mrs. Stoll to Miss Elizabeth McHenry, enlargement and the negative;

74-a, 74-b—With reference to the testimony concerning the letter addressed to the Custodian, the envelope, an enlargement and the negative;

74-c, 74-d—With reference to the inside of the envelope addressed to the Custodian, enlargement and a negative;

74-d-e, 74-f—With reference to the front page of the letter addressed to the Custodian, enlargement as Government Exhibit 74-e (should it not read (e)?) and the negative, 74-f.

74-g, 74-h—With reference to the letter addressed to the Custodian, an enlargement and the negative;

75-a, 75-b, 75-c, 75-d—Two enlargements and a negative, with reference to the envelope "Important . . . Read instructions for operating in this envelope, L. C. Smith and Corona Typewriter Company, Inc.

75-e, 75-f, 75-g, 75-h—With reference to the reverse side of the same above envelope, two enlargements and the negative; and the charts of the same.

And to strike from and exclude from the jury any and all other exhibits to which said Knowles referred; and to strike and exclude from the jury all of said testimony of said witness Knowles; and to strike from the evidence and to exclude from the jury exhibits 68-a, 68-b, and 69, and the testimony of witness Richard E. Smith,—

Because the testimony of witness Knowles and the filing of the aforesaid exhibits and all such exhibits as witnesses Richard E. Smith and John P. Knowles referred

to was made contingent upon and subject to witness Knowles connecting up and identifying the known specimens of fingerprints with those appearing on certain exhibits which had tentatively and conditionally been filed by the United States as Government Exhibits; and because witness John P. Knowles failed to so connect them up or properly identify them, because he testified the fingerprints on those exhibits and documents could have been made by no other person than Thomas H. Robinson or that they were made by Thomas H. Robinson (a person other than this defendant, Thomas Henry Robinson, Jr.), and because this erroneous identity is important as a ground of objection inasmuch as Thomas Henry Robinson, Jr., and Thomas Henry Robinson, Sr., are distinct and separate persons named in the indictment in this case; and because Thomas Henry Robinson, now deceased, was tried on this said indictment and acquitted.

Counsel for the defendant Thomas Henry Robinson, Jr.

Dec. 6, 1943.

MOTION FOR DIRECTED VERDICT OF ACQUITTAL AND DISMISSAL AT CLOSE OF ENTIRE CASE.

Comes the defendant, Thomas Henry Robinson, Jr., by counsel, and at the close of the entire case, moves for a directed verdict of acquittal and dismissal of the indictment herein, because at the close of the entire case, the plaintiff has wholly failed to prove the allegations contained in said indictment against this defendant.

Counsel for the Defendant

Dec. 11, 1943.

TRIAL ORDER AND VERDICT OF JURY—Entered by Judge Shackelford Miller, Jr., December 11, 1943.

Pursuant to a prior setting of this case for trial, it came on to be heard before the Court and Jury on November 29, 1943, the United States appearing by Eli H. Brown, III, United States Attorney, and J. D. Inman, Assistant United States Attorney, on behalf of the United States, and the defendant in his own person and by counsel, Robert E. Hogan. Both sides announced ready. Eleven jurors having been selected and the hour of adjournment having arrived, the jury was duly admonished and placed in the custody of the Deputy United States Marshal, and Court was adjourned until November 30, 1943, at 9:30 A. M.

On November 30, 1943, at 9:30 A. M., came all the parties hereinbefore mentioned; the selection of the jury was completed, being composed of the following persons:

Joseph C. Powers	William H. Thornberry
J. Lawrence Abell	Will Lee Mattingly
Hugh Beaven	J. Wilson Green
Joseph J. Edelen	Earl W. Ackerman
Mrs. Elizabeth F. Davidson	E. E. Hardin
Robert Goff	Mrs. Gladys Elswick

The said jurors were impaneled and sworn to try the case and a true verdict render according to the law and the evidence. It was agreed between counsel, without waiving the right to question the constitutionality of the statute, that the case be tried with one alternate juror and C. E. Miller was selected and sworn and seated adjacent to the jury box. The District Court then instructed Deputy Marshals Marion O. Cassady and Mrs. Bernadine Kearney and Special Bailiff, John Moremen to well and truly guard the jury, and further directed them not to allow the said jury or any member of said jury to read, see or have access to any newspaper, magazine or other periodical containing or purporting to contain any account of said trial. Said Deputy Marshals and Special Bailiff were duly sworn by the Clerk of the Court to well and truly guard the jury and keep them in custody and together in space allotted and set apart for them at all times that the court was not in session.

Trial Order and Verdict of Jury

The opening statement for the United States was made by J. D. Inman, Assistant United States Attorney and at the conclusion of said statement, counsel for the defendant, Robert E. Hogan, reserved his opening statement and declined to make any at that time. Thereupon the introduction of evidence on behalf of the United States to prove the indictment was started. The hour of adjournment having arrived, the jury was duly admonished according to law and the court adjourned to 9:30 A. M., December 1, 1943.

On December 1, 1943, the Court reconvened, all parties were present, and evidence of the United States was resumed. At the hour of adjournment the Court admonished the jury and the case was continued to December 2, 1943, at 9:30 A. M.

On December 2, 1943, at 9:30 A. M., the Court reconvened, the United States being present by counsel and the defendant being present in person and by counsel, and the evidence on behalf of the United States was resumed. At the hour of adjournment, the jury was duly admonished and court was adjourned to December 3, 1943, at 9:30 A. M.

On December 3, 1943, at 9:30 A. M., all parties being present, court was again convened and the evidence for the United States was resumed. At the hour of adjournment the jury was admonished and the case was continued for hearing until December 4, 1943, at 9:30 A. M.

On December 4, 1943, the court convened at 9:30 A. M., all parties being present, and evidence for the United States was resumed. At 12:45 P. M., the Jury was duly admonished and court was adjourned until Monday, December 6, 1943, at 9:30 A. M.

On December 6, 1943, at 9:30 A. M., all parties being present, the court reconvened. The United States Attorney announced that the Government rested, all evidence of the United States having been completed. Thereupon the defendant by counsel, tendered motion to strike and to exclude certain exhibits theretofore introduced on behalf of the United States, which motion was ordered filed and ruling reserved thereon. Whereupon the defendant by counsel, tendered motion for directed verdict, which mo-

tion was ordered filed and overruled by the Court with exception to the defendant. Evidence for the defendant was begun and at 4:15 P. M., the jury was duly admonished and excused until December 7, 1943, at 9:30 A. M.

On December 7, 1943, at 9:30 A. M., all parties being present, the court again convened and evidence on behalf of the defendant was resumed. At the hour of adjournment the jury was duly admonished and the case was continued to December 8, 1943, at 9:30 A. M.

On December 8, 1943, at 9:30 A. M., the case was called for trial, all parties being present, and a report was made to the Court of the illness of two of the jurors. Thereupon the court was recessed until 2:30 P. M., December 8, 1943. At 2:30 P. M., December 8, 1943, court reconvened, all regular jurors being present with the exception of Mrs. Elizabeth F. Davidson. A report was made to the Court that the illness of Mrs. Davidson made it impossible for her to be present and it was doubtful whether she would be able to resume her place in the jury box on December 9, 1943. Thereupon Mrs. Elizabeth F. Davidson, a juror on the reglar panel, was excused and C. E. Miller, alternate juror, was directed by the Court to take the place of Mrs. Elizabeth F. Davidson on the regular jury. Mrs. Elizabeth F. Davidson was finally discharged by the Court. Evidence for the defendant was resumed.

The defendant, by counsel, tendered a motion for personal attendance of Dr. H. B. Brackin, fees and expenses to be paid by the United States, together with affidavit of the defendant in support thereof, which motion and affidavit were filed and sustained by the Court. The hour of adjournment having arrived, the jury was duly admonished and the case was continued to December 9, 1943, at 9:30 A. M.

On December 9, 1943, at 9:30 A. M., all parties being present, court was reconvened and evidence on behalf of the defendant was resumed. At 9:30 P. M., the jury was duly admonished and court was adjourned until December 10, 1943, at 9:30 A. M., at which time the court reconvened, all parties being present, and evidence for the defendant resumed and concluded. Thereupon the United States

Attorney announced that he desired to present certain rebuttal evidence. Hearing of rebuttal evidence was begun and concluded, and the hour of adjournment having arrived, the jury was duly admonished and court was adjourned until December 11, 1943, at 9:30 A. M.

On December 11, 1943, at 9:30 A. M., all parties being present, court was reconvened and evidence for the defendant in surrebuttal was heard and concluded. Both sides by counsel, announced that they had no further evidence to offer. Whereupon the defendant's tendered motion to strike and exclude certain government exhibits was again made, was overruled by the Court with exception to the defendant. The defendant, by counsel tendered motion for directed verdict of acquittal, and dismissal, which motion was filed and overruled by the Court, exceptions granted to the defendant.

A conference was held out of the presence of the jury in the chambers of the Court, Eli H. Brown, III, United States Attorney, being present and Robert E. Hogan, counsel for the defendant, being present. Counsel for the United States tendered two requested charges to be made by the Court to the jury; counsel for the defendant requested twenty-two charges to be given by the Court to the jury. The suggested charges, both on behalf of the United States and on behalf of the defendant, were ordered filed.

The opening argument on behalf of the United States was made by J. D. Inman, Assistant United States Attorney. The argument on behalf of the defendant, Thomas Henry Robinson, Jr., was made by counsel for the defendant, Robert E. Hogan, and the closing argument on behalf of the United States was given by Eli H. Brown, III, United States Attorney. Thereupon, the customary hour for evening meal having arrived, court was recessed until 7:30 P. M., December 11, 1943. At 7:30 P. M., on December 11, 1943, the court reconvened, the jury was duly instructed by the Court, and by agreement with counsel three written forms of verdict were submitted to the jury. The jury thereupon retired to consider the case. At 11:15 P. M., after an absence of approximately two hours and one-half, the jury returned into open court and informed the Court

that they had made a verdict. Whereupon the Foreman of the jury read the verdict of the jury and then handed it to the Clerk, and then it was handed to the Judge who examined it and found it to be in proper form and returned it to the Clerk to become a part of the permanent files of his office.

The verdict of the jury returned at 11:15 P. M., on December 11, 1943, read as follows:

> "We, the jury, find the defendant, Thomas Henry Robinson, Jr., guilty, and recommend punishment by death."
>
> Signed, "Will Lee Mattingly,
> Foreman."
>
> December 11, 1943.

Whereupon counsel for the defendant was requested whether he desired a polling of the jury, and on the Court's own motion each juror was asked individually if the verdict read in open court by the Foreman was his own verdict, and the answer of each of the twelve jurors was "Yes."

Whereupon by agreement the cause was passed to December 13, 1943, at 10:00 A. M. for the sentencing of the defendant Thomas Henry Robinson, Jr., and court was adjourned and the jury discharged.

MOTION IN ARREST OF JUDGMENT.

Now comes Thomas Henry Robinson, Jr., defendant herein, and moves that the verdict of guilty returned against him by a jury in this court upon the 11th day of December, 1943, be arrested and no judgment or sentence be imposed thereon for the following reasons:

(1) That the indictment upon which the defendant was tried and convicted does not state facts sufficient to constitute a crime against the United States.

(2) The indictment does not contain such a statement of the facts and circumstances as to inform the accused, this defendant, of the specific acts with which he is charged.

(3) The indictment upon which this defendant was tried alleges, in the language of the statute, that this defendant knowingly transported in interstate commerce a person who had been unlawfully kidnaped and held for ransom, to-wit, Mrs. Alice Stoll, and that this defendant "did not liberate her unharmed"; but such bare, naked allegation, does not meet the requirement that an indictment must fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished; nor does the indictment meet the further requirement that a crime must be charged with precision and certainty and every ingredient of which it is composed must be accurately and clearly alleged.

(4) The indictment upon which this defendant was tried is not free from ambiguity, and leaves doubt in the mind of this accused of the exact offense intended to be charged, and does not apprise this defendant what he is called upon to meet.

(5) The indictment upon which this defendant was tried, although alleging that Mrs. Alice was not released unharmed, does not allege or charge any specific physical or bodily injuries or harms, and this defendant did not know, and could not know, what to expect or what defense he would be called upon to make to such a bare, naked, unexplained allegation; because such allegation could have meant Mrs. Alice Stoll was injured or harmed in any

number of ways or to any number of extents or degrees, and such allegation was, and is, susceptible of any number of meanings and interpretations, and is not clear or specific.

(6) That the offense charged and alleged in said indictment is duplicitous.

(7) That the indictment upon which this defendant was tried was, and is, wholly lacking in accurate and clear allegations and does not, and did not, warrant or permit the introduction of any evidence to sustain the allegation that Mrs. Alice Stoll was not liberated unharmed.

_____,
Counsel for Defendant,
Thomas Henry Robinson, Jr.

MOTION AND GROUNDS FOR NEW TRIAL.

Comes now the defendant, Thomas H. Robinson, Jr., in person and by counsel, and moves the court to vacate the verdict of the jury, the judgment entered thereon, and sentence imposed herein, and to grant to this defendant a new trial, upon the following grounds:

1. The verdict of the jury is contrary to the weight of the evidence, and is contrary to law.

2. Because the verdict was, and is, one of an impassioned and prejudiced jury.

3. Because of false and untrue testimony of witnesses E. M. Allen and Mr. and Mrs. Palmer concerning the existence, or non-existence, of tourist camp facilities at Beechwood Inn or Beech Grove Inn.

4. Because of the Court's refusal to permit witness Ivan Carlise to fully rebut the testimony of witnesses E. M. Allen and Mr. and Mrs. Palmer concerning said tourist camp facilities.

Motion and Grounds for New Trial

5. Because the court erred in excluding testimony of witness W. K. Powell, to which defendant at the time excepted, and still excepts, and made an avowal.

6. Because the Court erred in excluding testimony of witnesses Joseph Hayse and Nellie Stoess Hayse to contradict and impeach the testimony of witness Ann Woolet, to which defendant at the time excepted, and still excepts.

7. To error of the Court in refusing to permit a prior statement or statements of witness Ann Woolet to be read to contradict and impeach her.

8. To error of the Court in allowing Ann Woolet and Fowler Woolet to invoke the privilege of refusing to allow their previous statements to be read to contradict and impeach their testimony, on the ground that when they had given such statements the relationship of atorney and client existed between them and Joseph Hayse.

9. Error in instructions given by the Court and in refusing to give offered instructions of the defendant.

10. Error of the Court in commenting upon the testimony of Doctors Solomon and Crice and in telling the jury they were not members of any lunacy commission of Jefferson County because no such commission was found to be provided for by the Kentucky Statutes, as such comment tended to, and did, sway the jury and tended to, and did, cause them to disregard the testimony of those two said physicians, and to destroy this defendant's defense of insanity.

11. Error of the Court in commenting upon the testimony of witness Alvin Kirtley, as that had a swaying and prejudicial effect upon the jury and its verdict.

12. Error of the Court in commenting upon, and unduly stressing, that this defendant had written that he was the kidnaper of Alice Stoll, which comment tended to, and did, completely destroy this defendant's defense that Mrs. Alice Stoll went willingly, and swayed the jury prejudicially against this defendant.

13. Error of the Court in commenting upon, and unduly and impassionately stressing to the jury the questioned fact as to whether or not Mrs. Alice Stoll had a cut on her head at the time she was released, causing said jury

to be prejudiced and impassioned against this defendant and causing said jury to recommend the imposition of the death penalty upon this defendant, without which said comment said jury would not nave so recommended the imposition of the death penalty upon this defendant.

14. Because of error of the Court in refusing to direct a verdict of acquittal and to dismiss the indictment at the close of the Government's case; and error of the Court in refusing to direct a verdict of acquittal and to dismiss the indictment at the close of the case for both sides.

15. Error of the Court in overruling defendant's objection to the introduction of testimony upon the condition of Mrs. Alice Stoll at the time of her release and permitting such testimony to be introduced, to which defendant at the time excepted and still excepts, which said testimony erroneously permitted and enabled the jury to recommend the imposition of the death penalty, and without which they could not have so recommended, all of which highly and greatly projudiced this defendant and his substantial rights.

16. The Court erred in overruling defendant's motion to strike all of the testimony of witness Knowles, the Government's fingerprint expert, and all the exhibits introduced or sought to be introduced by him, because said witness Knowles said the questioned fingerprints which he compared with genuine fingerprints could have been made by no other person than Thomas H. Robinson, a person other than this defendant; to which the defendant excepted at the time, and still excepts.

17. Error in refusing offered testimony of this defendant, to which defendant at the time excepted, and still excepts.

18. Error in permitting the United States of America to introduce testimony offered by it, to which defendant at the time excepted, and still excepts.

19. The proof fails to show that Alice Speed Stoll was held for ransom or reward, or that any ransom or reward was ever actually delivered to this defendant.

20. The testimony which tends to connect this defendant with the commission of the offense charged in the in-

dictment was, and is, insufficient to warrant submitting this case to the jury under this indictment.

21. The trial court erred in pronouncing judgment against this defendant.

22. Error of the court in permitting the jurors to have access to, and to read, newspaper accounts of the trial of this defendant, which said newspaper accounts were highly prejudicial against this defendant and impassioned the jurors against this defendant.

23. The Court erred in ruling that this was a capital case, and instructing the jury accordingly, and in permitting said jury to recommend the imposition of the death penalty.

24. Error of the Court in instructing the jury that they may recommend a death penalty, because this was not, and is not a capital case, and there was a complete lack of any evidence that at the time of the verdict of the jury or at the time of imposition of the sentence, said Mrs. Alice Stoll was in a harmed condition; because she testified during the trial of this action and neither she nor any other witness said or presumed to say that during this trial of this defendant she was in a harmed, disabled, hurt, infirm, or impaired physical condition from any injuries inflicted upon her at any time, or between October 10, 1934 and October 16, 1934, by this defendant; and because the statute in question forbids the imposition of the death penalty or the recommendation of the death penalty by the jury if at the time of imposition of sentence of the defendant the alleged victim is produced in an otherwise than harmed condition or at such time shown to be in an otherwise than harmed condition.

25. Because the indictment in this cause is defective, and duplicitous, and does not contain facts or allegations sufficient to constitute an offense against the United States of America, or to charge this defendant with the commission of any offense against the United States of America.

26. Because the Court erroneously permitted evidence of prior crimes and indictments to be introduced against this defendant, to which defendant excepted at the time and still excepts.

27. Because the Court erroneously permitted evidence of lay witnesses to establish that this defendant knew right from wrong, to which this defendant objected and excepted at the time, and still excepts.

28. Because the Court erroneously permitted a letter to be read which this defendant had written while illegally being held in Leavenworth Penitentiary, which was written prior to this defendant's arraignment, to which this defendant objected and excepted, and still excepts.

Defendant says that each and all of the aforesaid grounds for new trial materially and substantially affected and do now so affect his substantial rights.

Wherefore: The premises considered, the defendant, Thomas Henry Robinson, Jr., respectfully prays as follows:

1. That this court permit this defendant to file this, his motion and grounds for new trial, and that the Court fix a time, not sooner than 10 days hence, for a hearing on said motion.

2. That this court grant to this defendant a new trial, and that the verdict of the jury and the judgment rendered thereon be set aside, and this defendant be granted a reasonable time in which to file additional grounds for a new trial.

_____

Defendant Pro Se.

_____

Counsel for Defendant.

Notice of filing accepted:

United States District Attorney.
Counsel for the United States of America.

JUDGMENT AND SENTENCE—Entered and Imposed by Judge Shackelford Miller, Jr., December 13, 1943.

Whereas at the October 1943 term of the United States District Court for the Western District of Kentucky held at Louisville, Kentucky, to-wit: Beginning on November 29, 1943, and each day thereafter, with the exception of Sunday, December 5, 1943, to and including December 11, 1943, Thomas Henry Robinson, Jr., was tried before the Court and jury duly impaneled and sworn in said Court in the above-styled case and numbered cause, and said jury returned the following verdict, to-wit:

> "Verdict, In the District Court of the United States for the Western District of Kentucky, Louisville Division, United States of America vs. Thomas Henry Robinson, Jr. We, the jury, find the defendant, Thomas Henry Robinson, Jr. guilty and recommend punishment by death.
>
> Will Lee Mattingly, Foreman,"

and thereupon said cause was continued by agreement for the sentencing of the said Thomas Henry Robinson Jr. at Louisville, Kentucky, on December 13, 1943.

Now on this 13th day of December, 1943, at Louisville, Kentucky, comes the defendant, Thomas Henry Robinson Jr., in person in open Court and by Robert E. Hogan, his attorney, and the United States of America by Eli H. Brown III, United States Attorney; thereupon the defendant in person and by counsel filed a motion in arrest of judgment, the same having been considered, be and is hereby overruled, to which the defendant excepted and still excepts, and which exception is allowed by the Court; and leave of Court having been had and obtained, the defendant, Thomas Henry Robinson Jr., in person and by counsel, filed his motion for a new trial; and said motion having been duly presented to the Court and argument had thereon, it is hereby ordered that said motion be and the same is hereby overruled; to which the defendant, Thomas Henry Robinson, Jr., excepted, and still excepts, and which exception is allowed by the Court.

Judgment and Sentence

Thereupon, Eli H. Brown III, United States Attorney, asked the judgment and sentence of the Court upon the said Thomas Henry Robinson Jr. in accordance with the verdict of the jury herein, and recommended to the Court that the sentence of death be imposed.

And it being demanded by the Court of the said defendant, Thomas Henry Robinson Jr., in person and by his counsel, Robert E. Hogan, whether he or either of them had anything to say why sentence should not be now pronounced against the said Thomas Henry Robinson Jr., and the defendant, Thomas Henry Robinson Jr., and his counsel, Robert E. Hogan, gave no legal reason further than has heretofore been given.

Whereupon, the premises being seen and by the Court well and sufficiently understood, it is now by the Court hereby considered, ordered and adjudged that the said defendant, Thomas Henry Robinson Jr., for the crime by him committed, and upon the verdict of the jury in this cause, during the hours of Friday, March 10, 1944, at the State Penal Institution in Eddyville, Kentucky, in the Western District of Kentucky, be by the United States Marshal for the Western District of Kentucky executed by causing to pass through the body of the defendant, Thomas Henry Robinson Jr., a current of electricity of sufficient intensity to cause death as quickly as possible. The application of the current to be continued until Thomas Henry Robinson Jr. is dead. The said sentence of death to be carried out in the manner and form as provided by the Statutes of the United States of America, in conformity and in compliance with the statute law of the Commonwealth of Kentucky.

It is further ordered and adjudged that the defendant, Thomas Henry Robinson Jr. be remanded to the custody of the United States Marshal for the Western District of Kentucky, and by him to be held in Jefferson County jail at Louisville, Kentucky, for a period not less than six (6) days pending further orders of this Court as to the place to which he shall be committed pending the execution of this judgment.

ADDITIONAL GROUNDS IN SUPPORT OF MOTION FOR NEW TRIAL—Filed December 14, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., by counsel, and with leave of court, and for additional grounds in support of his motion for a new trial, states:

29. The judgment and sentence imposed is too harsh and wholly out of proportion to anything proven against this defendant.

30. Because the jury's verdict was, and is, the result of passion and prejudice engendered in their minds by reason of the alleged smearing by this defendant of Mrs. Alice Stoll and of some two or three other women in Tennessee, when in truth and in fact smearing is not alleged in the indictment and the jury's verdict, influenced as it was, by what the defendant said of his relationship with Mrs. Alice Stoll, and influenced as it was, by the determined efforts on the part of the Government to show that he smeared other women—was a verdict of an impassioned and prejudiced jury, and a verdict of what the defendant said of or about Mrs. Alice Stoll rather than what he did to her, or what he did as alleged in the indictment; that the jury's verdict of guilty and their recommendation that the death penalty be imposed, was impassioned and influenced by what this defendant said of Mrs. Alice Stoll and what he is alleged to have done to other women, rather than what he did as charged in the indictment. In other words, the jury convicted him of slander and smearing when in truth and in fact the indictment upon which he was tried contains no allegations of slander or smearing.

31. Because the Court in accepting the recommendation of the jury that the death penalty be imposed, and imposing the death penalty upon this defendant, did so because, and as the Court openly stated in court, he believed that the matters and things said by this defendant of his relationship with Mrs. Alice Stoll were untrue, and that if this defendant had not made such alleged untrue statements of and concerning Mrs. Alice Stoll, the Court would not have accepted the recommendation of the jury and would not have imposed the death penalty. But, the

Court in so doing imposed the death penalty upon alleged slanderous and untrue statements made allegedly by this defendant against Mrs. Alice Stoll, where as in truth and in fact slander is not alleged in the indictment, and the Court had no right to impose the death penalty upon this defendant because of what the defendant said or may have said rather than what he did pursuant to the allegations in the indictment.

32. Because slander or smearing words constitute no part of the allegations of the indictment and slander or untruth is not punishable by death.

33. Because the Court was biased and prejudiced and influenced and impassioned the jury to render a verdict of guilty and to recommend the imposition of the death penalty.

34. Because the jury and the Court failed to consider, as mitigating circumstances, the fact that this defendant had been illegally punished and confined in penitentiaries in violation of his constitutional and legal rights for a period of seven and one-half years.

35. Because the Court commented unfavorably upon certain of defendant's evidence and testimony, to-wit: commented that this defendant had written a letter to "Dear Mr. Intermediary" in which it was stated that this defendant was the kidnaper of Mrs. Alice Stoll, and the Court very pointedly brought out to the jury that that letter was an admission of the disputed fact of whether this defendant kidnapped Mrs. Alice Stoll or whether she went with him—one of the main points in issue; and further commented that in this letter this defendant had stated that Mrs. Alice Stoll had a slight cut upon her head which had partially healed, the Court commenting that that was an admission that this defendant had inflicted upon the victim an injury. That emphasized impassionedly to the jury the infliction of injury upon the victim, but the Court did not comment upon a letter that had been written to Miss McHenry in which it was stated that the injury had completely healed, the comment of the Court being unfair in failing to show that if there had been a cut on the victim's head it had healed.

Additional Grounds in Support of Motion, Etc.

36. Because the court refused to comment that the Government had deliberately attempted to obstruct justice by taking a statement from the witness Ivan Carlisle to the effect that he was the owner of Beechwood Inn or Beech Grove Tourist Camp during the Summer of 1931, and that at this camp were facilities which were and could be rented to tourists and others registering as tourists, and refused to comment to the jury that the F. B. I. had held this witness a virtual prisoner in its office and that the Government had refused to put him on the stand and let him divulge the truth about the existence of the tourist camp in question, and its accommodations, inasmuch as the Court, by its own admission, was influenced to impose the death penalty because it believed the defendant had told an untruth about the existence of the aforesaid tourist camp and facilities.

37. Because the Court failed to comment upon the Government's failure to produce finger print evidence to show that this defendant had ever had his hands upon the pipe with which it was claimed this defendant struck Mrs. Stoll.

38. Because the Court failed to comment upon the Government's failure to produce finger-print evidence of this defendant upon many exhibits and documents—witness Knowles admitting that the finger prints found upon those exhibits and documents could have been made by no other person than Thomas H. Robinson, a person other than this defendant, Thomas H. Robinson, Jr.

39. Because the Court failed to comment upon the complete lack of chemical or other analysis of blood that was claimed to have been produced when this defendant allegedly struck Mrs. Stoll with the alleged iron pipe.

40. Because the Court failed to comment upon the failure of the Government to produce the bed spread or coat or other articles upon it was claimed Mrs. Stoll's blood was spilled as the result of being struck by the alleged pipe.

41. Because the Court unfavorably and impassionedly commented upon the evidence of and against the defendant, and did not comment upon any evidence of the Government or the failure to produce evidence by the Government on

certain issues, or the fact that the Government had deliberately suppressed evidence.

Defendant says that each of the aforesaid additional grounds for a new trial materially and substantially affected, and do now so affect this defendant's substantial rights, all to his prejudice.

Wherefore, the premises considered, the defendant, Thomas Henry Robinson, Jr., respectfully prays as in his original motion and grounds for a new trial, and that the Court permit him to file this his additional grounds for a new trial, and that the Court grant him a new trial, and that the verdict of the jury and the judgment rendered, and sentence imposed thereon, to be set aside and held for naught.

Robert E. Hogan,
Counsl for the Defendant.

Notice of filing accepted:

Eli H. Brown III,
United States District Attorney.
Dec. 14, 1943.

AFFIDAVIT OF THOMAS HENRY ROBINSON, JR.
—Filed December 14, 1943.

State of Kentucky, }
County of Jefferson, } ss.

Thomas Henry Robinson, Jr., being first duly sworn, deposes and says:

That he is the Relator named in the foregoing Application for Leave to Proceed in Forma Pauperis on Appeal, and that he is a citizen of the United States by birth;

That in seeking to take, and in taking, said Appeal, as well as in submitting the foregoing Application, he is using the utmost good faith;

That be believes he has a meritorious cause of action and appeal and is entitled to the redress he seeks;

That because of his poverty, he is unable to pay the costs of said Appeal, or to give security for the same;

That except for the postage and the $5.00 filing fee for the Notice of Appeal, he is otherwise a pauper, and he has no real or personal property in any way conveyed or concealed, or in any way disposed of, for his future use or benefit.

That as evidence of good faith, he herewith tenders the sum of $5.00 to cover the cost of filing the Notice of Appeal;

That he claims no exemption and is willing to turn over the remainder of his funds to the Court for payment of such further costs as said funds will cover.

/s/ Thomas Henry Robinson, Jr.,
Affiant and Relator-Appellant.

Subscribed and sworn to before me this 13 day of December, 1943, by Thomas Henry Robinson, Jr.

My commission expires September 8, 1946.

/s/ Robert E. Hogan,
Notary Public, Jefferson County, Ky.

APPLICATION FOR LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL—Filed December 14, 1943.

To The Honorable Shackelford Miller, Jr., Judge of the above entitled Court, or to any other judge thereof:

Thomas Henry Robinson, Jr., the relator herein, respectfully shows:

That on the 11th day of December, 1943, a verdict of guilty was returned herein, upon which judgment was subsequently entered and sentence subsequently imposed, and that in the above entitled cause certain manifest errors have intervened to the great prejudice and damage of the said Relator, who, conceiving himself aggrieved thereby, desires to appeal to the United States Circuit Court of Appeals for the Sixth Circuit;

That by virtue of the facts set forth in the accompanying affidavit in Forma Pauperis filed herewith, said Relator is unable to pay the costs of said Appeal or to give security for the same, and he believes that he is entitled to the redress he seeks.

Wherefore, the said Relator prays for leave to proceed in forma pauperis on the appeal, as provided for under the United States Code, Title 28, Section 832; and he also prays for such other and further orders and processes as may cause all and singular the records, papers, exhibits, including a Bill of Exceptions, and proceedings in said cause to be sent to the United States Circuit Court of Appeals for the Sixth Circuit, under and according to the law of the United States in that behalf made and provided, so that the same may be inspected and the Judges of said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to law ought to be done.

And your Relator will ever pray.

Dated this 13th day of December.

Thomas Henry Robinson, Jr.,
Relator,—Appellant Pro Se.

Notice Accepted:
Eli H. Brown, III,
United States District Attorney.

Dec. 14, 1943.

ORDER FILING DEFENDANT'S ADDITIONAL GROUNDS IN SUPPORT OF MOTION FOR NEW TRIAL, AND APPLICATION TO PROCEED IN FORMA PAUPERIS—Entered by Judge Shackelford Miller, Jr., December 14, 1943.

Came the defendant by counsel and tendered Additional Grounds in Support of Motion for New Trial, which is ordered filed.

Defendant, by counsel, also tendered Application for leave to Proceed in Forma Pauperis in his Appeal to the United States Circuit Court of Appeals for the Sixth Circuit and defendant's supporting affidavit, both of which papers are ordered to be filed.

RESPONSE OF THE UNITED STATES OF AMERICA TO CERTAIN PORTIONS OF THE MOTION AND GROUNDS FOR NEW TRIAL FILED ON DECEMBER 13, 1943 AND TO CERTAIN POINTS CONTAINED IN THE ADDITIONAL MOTION AND GROUNDS FOR NEW TRIAL FILED ON DECEMBER 16, 1943—Filed December 16, 1943.

Comes the United States of America by counsel, and for response to Paragraph No. 3 and Paragraph No. 22 in the motion and grounds for new trial, and for response to Paragraph No. 36 contained in the additional grounds in support of motion for new trial, states:

It is expressly denied that E. M. Allen and E. S. Palmer and Mrs. E. S. Palmer testified falsely from the witness stand when subpoenaed to appear as witnesses on behalf of the United States on the trial of the above cause, and it is expressly stated that E. M. Allen and E. S. Palmer and Mrs. E. S. Palmer testified fully and exactly as to all facilities contained on the premises known as the Beech

Wood Inn and later known as the Beech Grove Tourist Camp. It is further stated that E. M. Allen was not even cross-examined by counsel for the defendant Thomas Henry Robinson, Jr.

With reference to Paragraph No. 22, it is expressly denied that at any time the jury or any member of the jury was permitted to have access to or to read any newspaper account of the trial of Thomas Henry Robinson, Jr., and it is expressly denied that said newspaper accounts were highly prejudicial and impassioned, and it is further stated expressly that the newspaper accounts correctly and impartially disclosed the facts.

For further response, it is stated that at the time of the swearing of the jury Deputy United States Marshals and the special bailiff to safeguard the jury, the said Deputy United States Marshals and special bailiff were expressly warned and cautioned by the District Judge not to allow at any time any member of the jury to see any paper, magazine or other periodical containing any account of the said trial. It is further stated expressly that the District Judge at the time of the selection of the jury warned the jury not to discuss or allow anyone to discuss with them any phase, fact or matter pertaining to the trial of United States versus Thomas Henry Robinson, Jr.

There is attached hereto and made a part hereof, marked "Exhibit A," the affidavit of Marion O. Cassady, Deputy United States Marshal in charge of all arrangements for safeguarding and protecting the jury; there is attached hereto and made a part hereof, marked "Exhibit B," the affidavit of Mrs. Bernadine Kearney, Deputy United States Marshal, who was sworn to safeguard and protect the jury; there is attached hereto and made a part hereof, marked "Exhibit C," the affidavit of John Moorman, who was a special bailiff, who was sworn to safeguard and protect the jury, wherein all three affidavits expressly state that at no time was any juror allowed to nor did any juror see any newspaper, magazine or other periodical wherein was contained any reference to the trial of United States versus Thomas Henry Robinson, Jr.

Response of the United States of America, Etc.

For further response, the United States by counsel expressly denies that the judgment and sentence recommended by the jury and imposed by the court was too harsh or out of proportion to the crime proven by the evidence introduced on the trial of the case. It is expressly denied that the jury verdict was the result of passion and prejudice. It is expressly denied that the Court was biased or prejudiced or influenced or attempted to influence in any way the jury to return a verdict of guilty with the recommendation that the sentence of death be imposed. It is expressly denied that the Court commented unfairly on the evidence or any portion of the evidence introduced on behalf of the United States and on behalf of the defendant on the trial of the above-styled case.

With reference to Paragraph No. 36 in additional motion and grounds for new trial, it is expressly denied that the Court refused to comment "that the Government had deliberately attempted to obstruct justice by taking a statement from the witness Ivan Carlisle," and it is stated that at no time was any request made to the Court to comment on this evidence or any other evidence, and it is further stated that out of 22 requests to charge submitted to the Court by the defendant in person and by counsel, Robert E. Hogan, that the court delivered 21 out of the 22 requests.

It is expressly denied that the Government attempted to or did in fact obstruct justice in any manner or degree whatsoever with reference to any testimony of Ivan Carlisle.

It is expressly denied that the witness Ivan Carlisle was held by the Federal Bureau of Investigation or by any employee of the United States Attorney's office a prisoner in its office, and it is stated affirmatively that Ivan Carlisle was subpoenaed to appear as a witness on behalf of the United States exactly as were some 120 other persons subpoenaed to appear as witnesses; that these witnesses on motion of the defendant were excluded from the court room; that it was necessary to provide accommodations in space that was too crowded to accommodate this large number of witnesses; that seats and chairs were arranged for these witnesses not only near the court room but also

in the offices of the United States Attorney and in certain of the offices assigned to the Federal Bureau of Investigation.

It is further affirmatively stated that at no time was the witness Ivan Carlisle or any other witness intimidated, interfered with, threatened or held a prisoner. It is further stated that Ivan Carlisle appeared in response to a subpoena in the office of the United States Attorney on December 9, 1943; that at that time he was registered in by the clerk-stenographer in the office of the United States Attorney; that at the end of the day's session he and other witnesses were discharged and told to return at 9.00 A. M. on Friday, December 10, 1943; that he and other witnesses returned at the hour indicated and remained in attendance on the court until 5.00 P. M. on December 10, 1943, at which time the said witness Ivan Carlisle nad other Government witnesses were released and were discharged on the authority of the United States Attorney and were duly paid by the United States Marshal for their traveling expenses and their witness fees.

There is attached hereto and made a part hereof, marked "Exhibit D," the affidavit of Ida Robinson, a clerk-stenographer in the office of the United States Attorney and the one charged with the duty of registering witnesses in and checking them out on their release by the United States Attorney.

There is attached hereto and made a part hereof, marked "Exhibit E," the affidavit of John G. Faulkner, Jr., Special Agent of the Federal Bureau of Investigation.

There is attached hereto and made a part hereof, marked "Exhibit F," the affidavit of James C. Bulman, Special Agent of the Federal Bureau of Investigation.

It is further expressly denied that at any time did the Government or the United States Attorney on behalf of the Government do anything other than to see that the defendant Thomas Henry Robinson, Jr. was afforded a fair and impartial trial, and it is expressly denied that the United States Attorney or any agent of the Federal Bureau of Investigation or any other Government agent did anything to impassion the jury, to suppress evidence or attempt in

any way to see that the defendant Thomas Henry Robinson, Jr. was afforded other than a fair and impartial trial for the crime for which he was indicted.

Eli H. Brown, III,
United States Attorney.

December 16, 1943.

AFFIDAVIT OF MARION O. CASSADY.

Comes your affiant, Marion O. Cassady, and states that he is the duly qualified and acting Deputy United States Marshal for the Western District of Kentucky, and states that on November 29, 1943, he was sworn by the United States District Clerk for the Western District of Kentucky to well and truly guard the jury being duly chosen and impaneled to try the issue joined between the United States and the defendant, Thomas Henry Robinson, Jr.

Your affiant further states that acting upon the instructions of the United States District Judge, Shackelford Miller, Jr., he was in charge of all arrangements for safeguarding and protecting the jury in the above case, and he was further instructed and ordered that at no time during the trial of said case and prior to the return of the verdict in said case and the discharge of the jury should he allow anyone to discuss with any member of the jury any fact or other matter pertaining to the trial of the above case, and that no one should be allowed to discuss any matter with a member of the jury unless it was in his presence, or further to allow any member of the jury to see any newspaper, magazine or other publication wherein any reference to the case on trial, to wit, United States v. Thomas Henry Robinson, Jr., was contained.

Your affiant states that acting upon said instructions, he at all times zealously and conscientiously carried out the instructions of the United States District Judge, and that

at no time during the period from 9:30 A. M., on November 29, 1943, to and including 11:26 P. M. on December 11, 1943, did the members of said jury discuss with anyone any fact or matter relating to the case on trial, to wit, United States v. Thomas Henry Robinson, Jr.

Your affiant further states that no one at any time talked to or had access to any member of the jury except on a few occasions members of their immediate families brought them changes of clothing, or they had occasion to discuss their own private business arrangements with their employees, and that at no time was any conversation had other than in the presence of your affiant and that on none of these occasions was any reference made to the case on trial.

Your affiant further states that at no time did any member of the jury have access to or see any newspaper, magazine or other periodical containing any account of any kind, character or description whatsoever pertaining to the trial of the defendant, Thomas Henry Robinson, Jr., or containing any mention of said trial.

Your affiant further states that the only time any newspapers were delivered to any member of the jury it was after he had personally cut from said newspapers all and every account of said case then being tried; and your affiant states that to his knowledge no juror saw, read or heard any discussion of an account of the trial contained in any newspaper, magazine or other periodical.

Marion O. Cassady.

Subscribed and sworn to before me by Marion O. Cassady this 20th day of December, 1943.

My commission expires Jan. 6, 1947.

Alice E. Spahn,
Notary Public, Jefferson County, Ky.

"Exhibit A."

AFFIDAVIT OF BERNADINE KEARNEY.

Comes your affiant, Bernadine Kearney, who states she is a duly qualified and acting Deputy United States Marshal for the Western District of Kentucky; that on Monday, November 29, 1943, she was duly sworn by the United States District Clerk for the Western District of Kentucky to safeguard and protect the jury impaneled and sworn to try the issue joined between the United States and Thomas Henry Robinson, Jr.

That she was instructed by the Honorable Shackelford Miller, Jr., Judge of the United States District Court for the Western District of Kentucky, to see that no person talked to or discussed with any member of the jury any evidence, fact or phase pertaining to the trial of United States v. Thomas Henry Robinson, Jr., and further to see that no member of the jury had access to or saw an account of the trial of the defendant, Thomas Henry Robinson, Jr., being carried in any newspaper.

Your affiant further states that under her oath she carried out the instruction of the United States District Judge, and that to her own knowledge no one talked to any member of the jury concerning in any manner the case then being tried, and that no one at any time carried on any discussion of any kind with any member of the jury unless she or another Deputy assigned to guard the jury was present.

Your affiant further states that at no time did any member of the jury reecive any newspaper, magazine or other periodical unless and until all articles pertaining to the case of United States v. Thomas Henry Robinson, Jr., had been clipped therefrom.

Bernadine Kearney.

Subscribed and sworn to before me by Bernadine Kearney this 20th day of December, 1943.

My commission expires January 6, 1947.

Alice E. Spahn,
Notary Public,
(Seal) Jefferson County, Ky.

"Exhibit B."

AFFIDAVIT OF JOHN MOORMAN.

Comes your affiant, John Moorman, who states that he is a Special Bailiff in the employ of the United States Marshal for the Western District of Kentucky; that on November 29, 1943, he was duly sworn by the Judge of the United States District Court for the Western District of Kentucky to safeguard and protect the jury duly impaneled and sworn to try the issue joined between the United States and Thomas Henry Robinson, Jr.

Your affiant was further instructed that at no time should any member of the jury have access to see, or hear discussed any newspaper article, or any article of any kind relating to the trial of the defendant, Thomas Henry Robinson, Jr.

Your affiant states that on his oath he carried out the instructions of the United States District Judge and that at no time did anyone discuss with any member of the jury any fact or matter pertaining to the case on trial, to-wit, United States v. Thomas Henry Robinson, Jr., and your affiant further states that at no time was there delivered to any member of the jury any newspaper, magazine or other publication purporting to relate facts which were testified to on the trial of the above case.

Your affiant further states that no member of the jury saw, had access to or read any newspaper, magazine or other publication which contained any reference to the case then on trial.

John Moorman.

Subscribed and sworn to before me by John Moorman this 20th day of December, 1943.

My commission expires January 6, 1947.

Alice E. Spahn,
Notary Public,
Jefferson County, Kentucky.

(Seal)

"Exhibit C."

AFFIDAVIT OF IDA ROBINSON.

Comes your affiant, Ida Robinson, and states that she is a clerk-stenographer in the office of the United States Attorney at Louisville, Kentucky, charged with the duty of registering witnesses on the date that they are to appear in response to a subpoena and further charged with the duty of discharging witnesses when they are released by the United States Attorney.

Affiant further states that on Wednesday, December 8, 1943, at the direction of the United States Attorney, she caused a praecipe to be issued for the appearance of Ivan Carlisle, Mr. and Mrs. Edward S. Palmer, Thomas C. Furrie, Joe Stivers and Arthur G. Shields; that they were subpoenaed to appear at 9:00 A. M. on Thursday, December 9, 1943.

Your affiant further states that the witness Ivan Carlisle and other witnesses appeared in her office set aside for the registering of witnesses on December 9, 1943; that at that time they were informed they should make themselves available to the call of the United States; since all witnesses were excluded from the court room, they would have to remain in the office of the United States Attorney, the corridors of the Federal Building, or certain rooms set aside for the use and convenience of witnesses in the offices of the Federal Bureau of Investigation.

Your affiant further states that the witness Ivan Carlisle appeared in her office alone and unaccompanied by any agent of the Federal Bureau of Investigation; that he checked in, was notified as all other witnesses were notified, and received from her a copy of the letter which was delivered to each of the witnesses, copy of which is attached hereto and made a part hereof. That the witness Ivan Carlisle remained, to the best of your affiant's knowledge and belief, adjacent to the court room until court was adjourned at approximately 5:00 P. M. on December 9, 1943. That again on the morning of December 10, 1943 the witness Ivan Carlisle, unaccompanied, with numerous other witnesses, checked in with your affiant and again remained adjacent to the court room until court was adjourned late

in the afternoon of December 10, 1943, at which time your affiant was instructed by the United States Attorney to release all Government witnesses, with the exception of four psychiatrists, Doctors Ackerly, Gardner, Kimbell and Landis, since the Government had closed its case.

Your affiant further states that at that time the witness Ivan Carlisle, together with numerous other witnesses, appeared in the office of your affiant and was discharged, at which time there was tendered to him the necessary voucher to present to the United States Marshal to pay for his attendance for the two days and the necessary travel expenses.

Your affiant further states that at no time did she instruct this witness or any other witness not to talk with anyone concerning the case, nor did she treat this witness in any wise different from the approximately 120 other witnesses who were subpoenaed to appear and testify in the above-styled case.

Ida Robinson.

Subscribed and sworn to before me by Ida Robinson this 18th day of December, 1943.

My commission expires Jan. 6, 1947.

Alice E. Spahn,
Notary Public, Jefferson County, Kentucky.

"Exhibit D."

AFFIDAVIT OF JOHN G. FAULKNER, JR.

Comes your affiant, John G. Faulkner, Jr., and states that he is a duly acting Special Agent of the Federal Bureau of Investigation, Department of Justice, assigned to the Louisville, Kentucky office.

Affiant states that at the direction of the United States Attorney, Ivan Carlisle was interviewed by your affiant on Tuesday, December 7, 1943; that at that time your affiant was seeking to determine the ownership of the Beech Grove Tourist Camp during the year 1931. That on December 7, 1943 your affiant interviewed Ivan Carlisle at his home in Jefferson County, Kentucky at the approximate hour of 1:00 P. M., at which time the interview lasted forty-five minutes, and again at 7:00 P. M., at which time the interview lasted approximately one hour, and that on both of these occasions Ivan Carlisle freely and willingly disclosed to your affiant all the facts as he recalled them concerning the ownership of the Beech Wood Inn and Beech Grove Tourist Camp during the period May, June, July, August and September, 1931 and following. That Ivan Carlisle at that time told that the premises were first rented to Elmer Allen during May, 1931 and that on July 13, 1931 the premises were sold to Edward S. Palmer.

Your affiant further states that during the evening of Tuesday, December 7, 1943 the information learned of Ivan Carlisle was delivered to the United States Attorney and your affiant was instructed by the United States Attorney to return to the home of Ivan Carlisle on Wednesday, December 8, 1943 and inform Ivan Carlisle that a subpoena had been issued for his appearance at 9:00 A. M. on Thursday, December 9, 1943.

Your affiant states that he again went to the home of Ivan Carlisle on Wednesday, December 8, 1943 and that Ivan Carlisle was not at home, and that your affiant left a note informing him that he had been subpoenaed to appear at the office of the United States Attorney on Thursday, December 9, 1943.

Your affiant further states that on Thursday, December 9, 1943 Ivan Carlisle appeared at the office of the United

States Attorney, was served with subpoena and was duly checked in by the clerk-stenographer in the office of the United States Attorney.

Your affiant further states that at no time was Ivan Carlisle intimidated, threatened or held incommunicado in the office of the Federal Bureau of Investigation or at any other place; that the witness Ivan Carlisle was treated exactly as each of the other 120 odd Government witnesses that were subpoenaed to appear and testify on the trial of the above-styled case; that the witness Ivan Carlisle appeared on Thursday morning, December 9, 1943, and was released at 5:00 P..M. on December 9, 1943 when the court adjourned trial until 9:30 the next morning.

Your affiant further states that again on Friday, December 10, 1943 Ivan Carlisle checked in at the office of the United States Attorney and remained in the rooms, corridors and places set aside for witnesses duly subpoenaed, between the hours of 9:00 A. M. and 5:00 P. M.

Your affiant further states that it was not necessary to call the witness Ivan Carlisle to testify since it affirmatively appeared from the testimony of Edward S. Palmer and Mrs. Palmer and Elmer Allen that they and only they had custody, control and possession of the premises known as the Beech Wood Inn and the Beech Grove Tourist Camp during the period of May through September, 1931. That at the close of the Government's case on December 10, 1943 witness Ivan Carlisle was discharged exactly the same as some forty other Government witnesses on that date, was released by the United States Attorney, certificate of attendance and mileage was figured by the clerk-stenographer in the office of the United States Attorney, and that he was paid by the United States Marshal exactly as were each of the 120 odd other witnesses that were subpoenaed to appear.

Your affiant further states that the witness Ivan Carlisle left the Federal Building at the close of the testimony of a day's session approximately 5:00 P. M. on December 10, 1943; that at no time was he followed, watched or in any wise interfered with by your affiant or, to the knowledge of your affiant, any other agent of the Federal Bureau of In-

vestigation or any other person in the employ of the Department of Justice.

Your affiant further states that during Thursday, December 9 and Friday, December 10, witness Ivan Carlisle, along with witnesses Elmer Allen, Mr. and Mrs. Edward S. Palmer, Thomas C. Furrie, Joe Stivers and Arthur G. Shields, who were subpoenaed at the same time that the witness Ivan Carlisle was subpoenaed, were treated exactly as every other witness was treated; that they were not interfered with or coerced in any manner whatsoever.

Your affiant further states that during the period involved that the witness Ivan Carlisle appeared in response to a subpoena, he was in the corridors of the Federal Building outside of the court room, as all witnesses have been excluded from the court room, in the office of the United States Attorney and in one of the offices of the Federal Bureau of Investigation which had been set aside for the accommodation of Government witnesses; that he was free to go at any time, but was informed that it could not be determined at what point he might be needed to appear and testify and at the instructions of the United States Attorney's office witness Ivan Carlisle and all other witnesses were requested to be available at all times; that this procedure was followed with the witness Ivan Carlisle exactly in the same manner and the same degree as all other witnesses who were subpoenaed to appear and testify on behalf of the Government.

John G. Faulkner, Jr.

Subscribed and sworn to before me by John G. Faulkner, Jr. this 18th day of December, 1943.

My commission expires Jan. 6, 1947.

Alice E. Spahn,
Notary Public, Jefferson County,
Kentucky.

"Exhibit E."

AFFIDAVIT OF JAMES C. BULMAN.

Comes your affiant, James C. Bulman, who is a Special Agent of the Federal Bureau of Investigation, assigned to the Louisville, Kentucky field office.

Your affiant states that he was with Special Agent John G. Faulkner, Jr. on the occasions mentioned in the affidavit of Faulkner in connection with the interview of the witness Ivan Carlisle.

Your affiant further states that he has read and carefully considered the affidavit of Agent Faulkner, and all the facts stated therein are true.

James C. Bulman.

Subscribed and sworn to before me by James C. Bulman this 18th day of December, 1943.

My commission expires January 6, 1947.

Alice E. Spahn,
Notary Public,
Jefferson County Kentucky.

(Seal)

"Exhibit F."

ORDER FILING RESPONSE OF THE UNITED STATES TO CERTAIN PORTIONS OF MOTION AND GROUNDS FOR NEW TRIAL AND ADDITIONAL GROUNDS FOR NEW TRIAL—Entered by Judge Shackelford Miller, Jr., December 16, 1943.

Came the United States District Attorney and tendered his Response on behalf of the United States to certain portions of the motion and grounds for new trial filed on December 13, 1943 and to certain points contained in the additional grounds for new trial filed December 16, 1943, which Response is ordered filed.

ORDER OVERRULING MOTION AND GROUNDS FOR NEW TRIAL—Entered by Judge Shackelford Miller, Jr., December 16, 1943.

This cause coming on for hearing on the additional grounds in support of motion for new trial and on the response to certain of the grounds filed by the United States Attorney on December 16, 1943, and the hearing being held in the chambers of the United States District Judge at Louisville, Kentucky; the United States being present by Eli H. Brown, III, United States Attorney for the Western District of Kentucky, and the defendant Thomas Henry Robinson, Jr. being present by Robert E. Hogan, his counsel, and full arguments having been had on each of the additional grounds in support of the motion for a new trial, and the response of the United States Attorney being considered, and the Court being fully advised, and the Court being further of the opinion that the defendant Robinson was accorded a fair and impartial hearing, and further being of the opinion that the jury verdict was not the result of passion and prejudice, and further being of the opinion that the said District Judge was not biased and prejudiced and did not influence and impassion the jury to render a verdict of guilty and recommend the imposition of the death penalty, and being further of the opinion that at no time did the Court refuse to comment on evidence produced by the Government on the trial of the case, and it further appearing that the defendant through counsel had requested that the Court deliver twenty-two separate and distinct charges to the jury, and it appearing without contradiction that the Court delivered twenty-one of the charges requested, and upon consideration,

It is Ordered and Adjudged that the additional grounds and motion for a new trial are insufficient and the said motion and grounds for a new trial are overruled, to which the defendant excepts, said exception being allowed by the Court.

NOTICE OF APPEAL TO THE UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT—Filed December 16, 1943.

The United States of America and the Honorable Eli Brown, III, United States District Attorney for the Western District of Kentucky, will hereby take notice, that the defendant, Thomas Henry Robinson, Jr., is appealing, and intends to appeal, this cause to the United States Circuit Court of Appeals, Sixth Circuit; and that this defendant, Thomas Henry Robinson, Jr., will file, or has filed, and intends to file in the office of the clerk of the District Court for the Western District of Kentucky, a notice of said appeal, in duplicate.

Thomas Henry Robinson, Jr.,
Appellant.

Robert E. Hogan,
Counsel for Appellant.

UNITED STATES MARSHAL'S RETURN
—Filed December 16, 1943.

Received this Notice at Louisville, Kentucky, December 16, 1943, and on December 16, 1943, I executed same by delivering a true copy of Notice to Eli H. Brown, III, United States Attorney, Louisville, Kentucky.

L. E. Cranor,
United States Marshal.

M. O. Cassady,
Dep. U. S. M.

NOTICE OF APPEAL TO THE UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT—Filed December 16, 1943.

Name and address of Appellant—
Thomas Henry Robinson, Jr.,
Jefferson County Jail,
Louisville, Kentucky.

Name and address of Appellant's Attorney—
Robert E. Hogan,
809 Kentucky Home Life Bldg.,
Louisville, Kentucky.

Offense—Unlawfully and knowingly transporting in interstate commerce a person who had been unlawfully seized, kidnaped, abducted and carried away and held for ransom, to-wit: Mrs. Alice Stoll, and did not liberate her unharmed, Section 408-a, Title 18, United States Code Annotated.

Date of Judgment—Verdict of Jury December 11, 1943, Judgment entered thereon as "guilty" December 11, 1943, which said verdict carried with it a recommendation that the death penalty be imposed.

Description of Judgment—Judgment was entered in accordance with the recommendations of the jury verdict, and sentence was imposed December 13, 1943, imposing the death penalty upon this defendant, to be executed March 10, 1944, by the electrocution of this defendant at the Eddyville, Kentucky, Penitentiary, in the manner provided by Kentucky laws.

Name of Prison where now confined—
Jefferson County,
Kentucky, Jail,
Louisville, Ky.

(Defendant to be removed to some Federal Prison)

I, the above named appellant, Thomas Henry Robinson, Jr., hereby appeal to the United States Circuit Court of

Appeals for the Sixth Circuit from the judgment abovementioned on the grounds set forth below.

Thomas Henry Robinson, Jr.,
Appellant.

Dated December 15, 1943.

GROUNDS OF APPEAL.

1. The Court erred in overruling appellant's plea in abatement, to which ruling appellant excepted.
2. The Court erred in overruling appellant's motion to elect which of the counts of the indictment it desired to prosecute, to which ruling appellant excepted.
3. The Court erred in overruling appellant's motion to dismiss the indictment, to which ruling appellant excepted.
4. Error of the Court in overruling appellant's motion to allow him to inquire into the proceedings and evidence of the Grand Jury which returned the indictment, and to inspect the minutes of said Grand Jury and to procure testimony and affidavits from said Grand Jurors and witnesses, to which ruling the appellant excepted.
5. Error of the Court in overruling appellant's motion to strike the motion of the United States for the appointment of psychiatrists to render a report to the Court, to which ruling the appellant excepted.
6. Error of the Court in appointing psychiatrists and having them to report to the Court on the appellant's sanity or insanity, to which ruling the appellant excepted.
7. Error of the Court in sustaining motion of the United States to strike the appellant's Plea in Abatement, to which ruling appellant excepted.
8. Error of the Court in overruling appellant's motion to fix bail, to which appellant excepted.
9. Error of the Court in overruling the demurrer of appellant to the indictment, to which ruling this appellant objected and excepted at the time, and still excepts.

10. The trial court erred in ruling that this was a "capital case," to which appellant excepted, and still excepts.

11. The Court erred in overruling appellant's motion to dismiss at the conclusion of the Government's case, to which ruling appellant excepted, and still excepts.

12. The Court erred in overruling appellant's motion to dismiss at the close of all of the evidence, to which ruling appellant excepted, and still excepts.

13. The Court erred in overruling appellant's Motion in Arrest of Judgment, to which ruling appellant excepted, and still excepts.

14. The Court erred in overruling appellant's motion and grounds for new trial, to which ruling the appellant excepted, and still excepts.

15. The verdict of the jury is flagrantly contrary to law and against the weight of the evidence.

16. The verdict was one of an impassioned and prejudiced jury.

17. The verdict of the jury was swayed and influenced by false and untrue testimony of witness Elmer G. Allen and of witnesses Mr. and Mrs. Palmer concerning the existence, or non-existence, of tourist camp facilities and accommodations at Beechwood Inn or Beech Grove Inn.

18. The Court erred in refusing to permit witness Ivan Carlisle to fully rebut the testimony of witnesses Elmer G. Allen and Mr. and Mrs. Palmer concerning said tourist camp facilities, to which ruling the appellant excepted and still excepts.

19. The Court erred in excluding testimony of witness W. K. Powell, which testimony tended to, and did, contradict witness Ann Woolet, to which exclusion the appellant excepted and made an avowal.

20. The Court erred in excluding testimony of witnesses Joseph Hayse and Nellie Steoss Hayse to contradict and impeach the testimony.

21. The Court erred in refusing to permit a prior statement or statements of witness Ann Woolet to be read to contradict and impeach her, to which appellant excepted, and still excepts.

22. Error of the Court in allowing Ann Woolet and Fowler Woolet to invoke the privilege of refusing to allow their previous statements to be read to contradict and impeach their testimony, refusing to do so on the ground that when they had given such statements the relationship of attorney and client existed between them and an attorney.

23. Error of the Court in ruling that the relationship between Ann Woolet and Joseph Hayse was that of attorney and client and that any statements so made to him were subject to the rule of privileged communications, when witness Ann Woolet had previously testified that she had not consulted any attorney, to which appellant excepted.

24. Error of the Court in instructions given by the Court and in refusing to give offered charges of appellant, to which appellant excepted, and still excepts.

25. Error of the Court in commenting upon, and discrediting the testimony of Doctors Solomon and Crice, as each comment was designed to, and did, sway the jury and caused the jury to disregard their testimony and such comments from the Court tended to, was designed purposely to, and did destroy appellant's defense of insanity.

26. Error of the Court in commenting upon the testimony of witness Alvin Kirtley, as such comments were designed to have, and did have, a swaying, influential and prejudicial effect upon the jury and its verdict.

27. Error of the Court in commenting upon, and unduly stressing that appellant had written and admitted that this appellant was the kidnaper of Mrs. Alice Stoll, which comment was purposely designed to, and did, completely destroy the issue of whether she was kidnaped after being held for ransom, and likewise de-

stroyed this appellant's defense that she went willingly, and such comment swayed the jury prejudicially against this appellant.

28. The Court erred in commenting upon, and unduly and impassionately stressing to the jury, the questioned fact of whether or not Mrs. Alice Stoll had a cut on her head or was suffering from other injuries sustained while kidnapped, causing said jury to be swayed, prejudiced and impassioned against this defendant (appellant herein), and, by reason of said passion engendered in their minds by the Court, causing said jury to recommend the imposition of the death penalty upon this appellant, without which said comment and impregnated passion said jury would not have recommended the imposition of the death penalty upon this appellant.

29. The Court erred in refusing to direct a verdict or acquittal at the close of the Government's case and at the end of the testimony on both sides.

30. The Court erred in overruling appellant's objection to the introduction of testimony upon the condition of Mrs. Alice Stoll at the time of her release; that is, whether or not she was suffering from any injuries at the time of her release which had been inflicted during the period of her alleged captivity, for the reason that the indictment, while charging, in the language of the statutes, that Mrs. Alice Stoll was not released unharmed, was not specific enough to put this appellant on notice of what he might be expected to meet so that he might plead in bar to some future indictment; and without the introduction of testimony on the physical condition of Mrs. Stoll upon her alleged release the Court could not instruct that the jury might return a recommendation of death penalty and the Court could not impose the death penalty.

31. The Court erred in overruling appellant's motion to strike all of the testimony of witness Knowles, the fingerprint expert, and all the exhibits and specimens introduced by or through him, because said witness

Knowles testified that the fingerprints in question were made by Thomas H. Robinson, a person other than this appellant, Thomas H. Robinson, Jr., and because that difference in identification is important in this case because both Thomas H. Robinson, Sr., and Thomas H. Robinson, Jr., were jointly indicted in this cause.

32. The Court erred in refusing offered testimony of this appellant, and in permitting the United States of America to introduce incompetent and irrelevant testimony.

33. The proof fails to show that Alice Speed Stoll was held for ransom or reward, or that any ransom or reward was ever actually delivered to this appellant.

34. The testimony which tends to connect this appellant with the commission of the offense charged in the indictment was, and is, insufficient to warrant submitting this cause to the jury under this indictment.

35. The Court erred in pronouncing judgment against, and sentence upon, this appellant.

36. The Court erred in permitting jurors to have access to, and to read, newspapers carrying news accounts of a highly prejudicial nature against this appellant.

37. The Court erred in instructing the jury that they might return a verdict carrying a recommendation that the death penalty be imposed.

38. There was a complete lack of any evidence that, at the time of the rendition of the verdict herein and the imposition of sentence, the alleged victim, Mrs. Alice Stoll, was in a harmed condition, and because the statute in question forbids the imposition of the death penalty if at the time of imposition of sentence the alleged victim is produceable, or is produced, in an otherwise than harmed condition; that is to say, she was alive, normal, healthy and was not suffering from any injuries, and did not claim to be so suffering, that may have been inflicted during her period of captivity.

The indictment in this cause is defective and duplicitous, and does not contain facts or allegations suffi-

cient to constitute an offense against the United States of America, or to charge this appellant with the commission of any offense against the United States of America.

39. The Court erroneously permitted evidence of prior crimes and indictments and evidence that this appellant attempted to "smear" other women, and that this appellant had been charged, though not convicted, of the commission of other offenses, all of which was, and is, highly prejudicial to the substantial rights of this appellant.

40. The Court erroneously permitted evidence of lay witnesses to be introduced to establish that this appellant knew right from wrong.

41. The Court erroneously permitted a letter, written by this appellant while an inmate in the Leavenworth Penitentiary, to be read, and which letter tended to establish, and did sway the jury into believing, that this appellant and his family and friends had devised the appellant's prior adjudications of insanity as a cloak or shield for this appellant to hide behind to escape prosecution in Tennessee; which letter, as established by the unrebutted testimony of this appellant, was written involuntarily by this appellant as a result of an inducement by the warden or other prison authorities offered to this appellant that if he would write such a letter he, this appellant, would be taken out of solitary confinement.

42. The judgment and sentence imposed are too harsh and wholly out of reason or proportion to anything proven against this appellant.

43. The jury's verdict was, and is, the result of passion and prejudice engendered in their minds by reason of some alleged untruths told of and about Mrs. Alice Stoll by appellant and by reason of alleged "smearing" of said Mrs. Stoll and of some other women in Tennessee, when in truth and in fact "smearing" and untruthfulness are not alleged in this indictment, and

the jury's verdict, influenced as it was, by what this appellant is alleged to have said rather than what he did or what he was charged in the indictment of doing.

44. The Court, in accepting the impassioned recommendation of the jury that the death penalty be imposed, and in imposing the death penalty upon this appellant, did so because, as stated openly in Court by the Court, that he believed that the things said by appellant of and about Mrs. Alice Stoll were untrue, and that he believed that the jury were influenced by those alleged untruthful statements, and as a result the death penalty was recommended; that he, the Court, would not have followed the recommendation of the jury and would not have imposed the death penalty had not this appellant made statements of and about Mrs. Alice Stoll which were unbelieved by the Court.

45. The Court had no right to consider what this appellant said or may have said, and had no right to impose the death penalty upon appellant because of what he said rather than what he did, in the bounds of the indictment's accusations.

46. This appellant is not and was not charged with slander or of uttering slanderous words, and slander or the utterance of besmirching words are not crimes punishable by death.

47. The Court itself was biased and prejudiced against this appellant and influenced the jury to render a verdict of guilty against appellant and to recommend the imposition of the death penalty.

48. The Court failed to consider, as mitigating circumstances, the fact that this defendant had in 1936, in the very same court room, been illegally arraigned, convicted, and punished and confined subsequently for over 7 years in penitentiaries in violation of his Constitutional and legal rights.

49. The Court commented unfavorably upon certain of appellant's evidence and testimony in a deliberate at-

tempt to influence and impassion the jury to convict this appellant and to recommend the imposition of the death penalty.

50. The Court failed to comment upon the Government's testimony.

51. The Court failed to comment that the Government had deliberately attempted to obstruct justice and to suppress evidence by holding witness Ivan Carlisle a virtual prisoner in the office of the F. B. I. until the Government had announced it had closed its case at the end of all the testimony, said witness Carlisle being a most important witness to the fact that certain tourist camp facilities were in existence and being used in the summer of 1931, a much disputed question, and a fact about which the Court expressed opinion that this appellant had told an untruth.

52. The Court failed and refused to comment upon the Government's failure to produce fingerprint evidence to show appellant had ever handled or wielded the iron pipe introduced as the pipe with which Mrs. Stoll had been allegedly struck.

53. The Court failed to comment upon the Government's failure to produce fingerprint evidence connecting this appellant with the handling of many exhibits and documents—witness Knowles, the fingerprint expert having stated that the fingerprints were made by Thomas H. Robinson, a person other than Thomas H. Robinson, Jr., appellant herein.

54. The Court failed to comment upon the lack of chemical or other analysis of blood claimed to have been produced when Mrs. Stoll was allegedly struck with a pipe. This lack of analysis was material and important in view of the undue stress laid upon the alleged blows to the head of Mrs. Alice Stoll, the blood alleged to have been produced by the alleged blows, and the injuries alleged to have been inflicted upon the alleged victim.

55. The Court failed to comment upon the failure of the Government to produce the bed-spread, or coat, or other articles upon which it was claimed Mrs. Stoll's blood was spilled as a result of allegedly being struck by the alleged pipe. No explanation or reason was advanced by the Government why such articles were not produced. The Government's failure to produce them and its failure to explain why they were not produced is a most important circumstance and tends to establish that no blow was struck and no blood was spilled.

56. The Court unfavorably commented upon other testimony and evidence of this appellant and failed to comment in any instance upon the Government's testimony.

57. Improper conduct on the part of the District Attorney in displaying an iron pipe to the jury with which it was claimed this appellant struck Mrs. Alice Stoll, and in keeping said iron pipe in view of the jury during the trial, and in one instance deliberately rapping said pipe on the counsel table in full view of the jury, causing a thunderous noise to be made thereby, such that the official Court stenographer was so frightened that she was compelled to, and did, ask for time to compose herself; such demonstration by the District Attorney being deliberately resorted to to impress upon the minds of the jury the heinousness of the alleged blows, and to impassion said jury against this appellant—to which unwarranted demonstration appellant's counsel called attention of the Court, and appellant then objected and excepted and still excepts; this unwarranted demonstration being made with a pipe that nowhere in the testimony was directly or at all established as being the pipe alleged to have been used by appellant in wielding the alleged blows.

58. Improper conduct of the District Attorney in telling the jury and detailing a conversation alleged to have been had between Mrs. Alice Stoll and the District Attorney in the office of the District Attorney, relating to the District Attorney informing Mrs. Alice Stoll of

what testimony she might expect to be brought out upon the trial, there being no testimony or evidence in the record to warrant or justify such comment by the District Attorney; said District Attorney when relating to the jury such alleged conversation resorted to tears in a deliberate effort to impassion the jury and which did impassion members of the jury and such misconduct had a decisive and swaying effect on said jury and contributed to, and did, cause said jury to not only render a verdict of guilty but to recommend the death penalty.

59. The testimony of appellant concerning his acquaintenceship with Mrs. Alice Stoll during the year 1931 stands, on this record, unimpeached, uncontradicted, and undenied, and therefore, on this record, stand admitted; and it was a grievous error to impose the death penalty or any harsh penalty upon this appellant based upon what this appellant said of or about Mrs. Alice Stoll, when, what he said of or about her stands unrebutted and uncontradicted.

Thomas Henry Robinson, Jr.,
Appellant.
Robert E. Hogan,
Counsel for Appellant,

Notice of filing
accepted: This 16 day of December, 1943.

Eli H. Brown, III,
U. S. District Attorney.

ORDER FILING NOTICE OF APPEAL AND GROUNDS OF APPEAL—Entered by Judge Shackelford Miller, Jr., December 16, 1943.

Came the defendant by counsel, and tendered in duplicate his Notice of Appeal to the United States Circuit Court of Appeals, Sixth Circuit, said Notice to be served on the United States District Attorney for the Western District of Kentucky, which Notice is hereby filed.

Counsel also tendered Notice of Appeal and Grounds of Appeal, with notice of filing accepted thereon by Eli H. Brown III, United States District Attorney December 16, 1943, which Notice and Grounds of Appeal is hereby filed.

ORDER SUSTAINING APPLICATION TO PROCEED IN FORMA PAUPERIS ON APPEAL TO THE CIRCUIT COURT OF APPEALS—Entered by Judge Shackelford Miller, Jr., Dec. 16, 1943.

This action having come on to be heard upon the application of defendant, Thomas Henry Robinson, Jr., and as Relator-Appellant, for leave to proceed in forma pauperis on appeal to the United States Circuit Court of Appeals, Sixth Circuit; and said defendant having filed herewith his affidavit in support of said application that he is not able to pay the costs of said appeal or to give security for same, and that he believes he is entitled to the redress he seeks; and the Court being sufficiently advised, said application or motion is hereby sustained; and It Is Hereby Ordered, Adjudged And Decreed that Thomas Henry Robinson, Jr., be, and he is hereby, given leave and is hereby authorized, permitted and allowed to proceed in forma pauperis on appeal to the United States Circuit Court of Appeals, Sixth Circuit, and he is hereby further allowed and permitted, in said forma pauperis such other and further orders and

processes as may cause all and singular the records, papers, exhibits, Bill of Exceptions, and proceedings in said cause to be sent to the United States Circuit Court of Appeals for the Sixth Circuit, under and according to the law of the United States in that behalf made and provided, so that the same may be inspected and the Judges of the said Circuit Court of Appeals, Sixth Circuit, may cause all further to be done therein to correct that error what of right and according to law ought to be done.

MOTION FOR ORDER STAYING AND SUSPENDING EXECUTION OF JUDGMENT AND FIXING BAIL
—Filed December 20, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., in person and by counsel, and moves the Court for an order staying and suspending the execution of the judgment herein, and for a supersedeas to issue staying the execution of the judgment herein pending this defendant's appeal to the United States Circuit Court of Appeals, Sixth Circuit; and further moves the Court for an order releasing this defendant upon bail and fixing bail in a reasonable amount pending this defendant's appeal to the United States Circuit Court of Appeals, Sixth Circuit, and that upon this defendant furnishing such bail as may be fixed, with sufficient surety, that he be discharged from custody.

Thomas Henry Robinson, Jr.,
Defendant.

Robert E. Hogan,
Counsel for Defendant.

Have seen:
Eli H. Brown III,
U. S. Atty.
12/20/43
Release on bail objected to.

ORDER FILING MOTION TO STAY EXECUTION AND FOR SUPERSEDEAS TO ISSUE, AND NOTICE OF MOTION WITH SERVICE OF SPECIAL BAILIFF —Entered by Judge Shackelford Miller, Jr., December 20, 1943.

Came the defendant by counsel and tendered Motion for an order staying and suspending the execution of the judgment herein and for a supersedeas to issue staying execution pending defendant's appeal, and further for an order releasing defendant upon bail fixed in a reasonable amount pending appeal, and upon defendant's furnishing such bail with sufficient surety, that he be discharged from custody, with objection of the District Attorney to defendant's release on bail noted thereon.

Counsel also tendered Notice of said Motion with the return of special bailiff, indicating service on the United States District Attorney and the United States Marshal for the Western District of Kentucky.

It is ordered said Motion and Notice be and they are hereby filed.

ORDER STAYING AND SUSPENDING EXECUTION OF SENTENCE PENDING APPEAL—Entered by Judge Shackelford Miller, Jr., December 20, 1943.

The defendant, Thomas Henry Robinson, Jr., having appealed from the judgment of conviction herein, and having moved the Court for an order directing that the said appeal be made a supersedeas, and the Court being sufficiently advised, it is hereby ordered, adjudged and decreed that the appeal filed by this defendant, Thomas Henry Robinson, Jr., be made, and it is hereby considered, a supersedeas; and it is further ordered and decreed that the execution of the judgment and the sentence imposed

thereunder and pursuant thereto be, and it is hereby ordered, stayed and suspended pending appeal by said defendant; and the Marshal of this Court shall be governed in accordance with the terms of this order.

Have seen:

Eli H. Brown III,
U. S. Atty.

12/20/43

Receipt of attested copy of this order is hereby acknowledged Dec. 20, 1943.

L. E. Cranor,
U. S. Marshal.

ORDER OVERRULING MOTION FOR BAIL—Entered by Judge Shackelford Miller, Jr., December 20, 1943.

This action having come on to be heard on the Motion of the defendant for an order releasing him upon bail and fixing bail in a reasonable amount pending defendant's Appeal to the United States Circuit Court of Appeals, Sixth Circuit, and for this defendant to be discharged from custody upon his furnishing such bail as might be fixed with sufficient surety;

And the Court being sufficiently advised said Motion is hereby overruled, to which the defendant, Thomas Henry Robinson, Jr. by counsel objected and excepts.

NOTICE—Filed December 20, 1943.

The United States Marshal for the Western District of Kentucky, L. E. Cranor, and the District Attorney for the Western District of Kentucky, Eli H. Brown III, will hereby take notice that the defendant, Thomas H. Robinson, Jr., is objecting to being confined in, or committed to any State or Federal penitentiary, house of correction, or any other Federal institution, pending this defendant's appeal to the United States Circuit Court of Appeals, Sixth Circuit, and will further take notice that this defendant is moving the Court for a supersedeas to issue, and for the fixation of bail in a reasonable sum pending this defendant's said appeal; and this defendant hereby further notifies the said United States Marshal, and the said District Attorney, that in the event of this defendant's failure to provide such bail as may be fixed by the Court, this defendant objects to being removed from the Jefferson County jail, because to do so while his appeal is pending, or while his appeal is being prepared, would be in violation of this defendant's constitutional and legal rights, and he intends to rely upon those rights, and he does not elect to begin service of the sentence or judgment.

Thomas Henry Robinson, Jr.,
Defendant.

Robert E. Hogan,
Counsel for Defendant.

ORDER FILING WRITTEN REPORT OF PSYCHIATRISTS—Entered by Judge Shackelford Miller, Jr., December 21, 1943.

The written report on the condition of the defendant, Thomas Henry Robinson, Jr., to Judge Shackelford Miller, Jr., made by Drs. Spafford Ackerly, Wm. E. Gardner, Isham Kimbell and E. E. Landis, psychiatrists, and dated October 11, 1943 is now ordered filed.

REPORT OF PSYCHIATRISTS—Filed December 21, 1943.

Honorable Shackelford Miller, Jr.
United States District Judge
Federal Building,
Louisville, Kentucky

Louisville Kentucky
October 11, 1943.

Re: Robinson, Thomas Henry, Jr.

Dear Sir:

We, the undersigned psychiatrists on October 11, 1943, have completed the examination of Thomas Henry Robinson, Jr., in accordance with your request.

Our examination of the defendant consisted of: (1) a physical examination; (2) a neurological examination; (3) a mental examination.

The physical examination was necessary in order that we might determine whether this man suffers from any physical illness which might in any way interfere with or influence his power of reasoning or his will power; or serve as a causative factor in the production of any form of mental disorder.

We find the defendant to be in good physical condition and that he does not suffer from any acute or chronic illness which might interfere with the normal function of his mind.

A neurological examination was necessary in this, as in any other neuro-psychiatric examination, to determine the presence or absence of any disease or condition of the peripheral nerves, the cranial nerves, or any part of the central nervous system, including the brain, which might in any way interfere with the normal functioning of the mind or become a causative factor in the production of mental disease.

We find no evidence of disease or impairment of the functions of the peripheral nerves, the cranial nerves or of the central nervous system, including the brain.

Mental Examination: The defendant came quietly and willingly into the examining room and cooperated in the physical, neurological and mental examination. His speech

was free, relevant, coherent; orientation correct in all spheres, and he was in normal contact with his surroundings. No delusions, illusions, or hallucinations were elicited. He shows normal insight; his judgment is not impaired; he shows appropriate emotional responses; and he does not show evidences of mental or emotional deterioration.

The diagnosis in this case is "Without Psychosis." This term is used by psychiatrists to signify that an individual is not insane and that he does not suffer from any form of mental disorder which would render him incompetent and irresponsible.

Respectfully submitted,

(s) Spafford Ackerly
Spafford Ackerly, M. D.

(s) Wm. E. Gardner
Wm. E. Gardner, M. D.

(s) Isham Kimbell
Isham Kimbell, M. D.

(s) E. E. Landis
Edw. E. Landis, M. D.

AFFIDAVIT OF ROBERT E. HOGAN.

United States of America, }
State of Kentucky, }
County of Jefferson. }

Affiant, Robert E. Hogan, states that he is counsel of record for the defendant, Thomas Henry Robinson, Jr.; that Notice of Appeal in the above styled cause was filed on December 16, 1943; that the trial of said case lasted for 13 trial days; that the record is voluminous; and affiant further states that on December 17th, 1943, this affiant wrote to the Clerk of the United States Circuit Court of Appeals, Sixth Circuit, notifying said clerk of said appeal, and requested that said Clerk furnish this affiant with a copy of the rules of said Circuit Court of Appeals; that under date of December 20th, 1943, said Clerk wrote this

affiant that he did not have any pamphlet copies of the rules of said Court for distribution and suggested that this affiant obtain such a copy from the Gates Legal Publishing Company, Cleveland, Ohio; that this affiant, promptly on receipt of said letter and said advice, wrote to said publishing company requesting a copy of said rules and under date of January 5, 1944, this affiant received from said publishing company a copy of the Rules of the United States Circuit Court of Appeals for the Sixth Circuit; that this affiant had no such copy of said rules previous to the taking of the aforesaid appeal, nor did this affiant have access to any copy of said rules, and affiant says that he has acted diligently in the matter of obtaining the rules of the said Circuit Court of Appeals. A copy of this affiant's letter of December 17, 1943, to said Clerk of said Circuit Court of Appeals, together with the original of said Clerk's letter to this affiant dated December 20, 1943, are filed with this affidavit in support thereof.

Affiant further states that the matters on appeal are material and important, and that more time is required for the preparation and settling of the bill of exceptions; the docketing of the appeal; the preparation of the record in this case; and the preparation and filing of defendant's assignment of errors; that the stenographers who took the evidence in his case have only recently compiled and arranged the same in form so that, if it meets the approval of the District Judge and the parties to said action, it may be filed as a bill of exceptions; that the record is voluminous and the Clerk of this Court has not copied the same, and can not copy the same for many days; that the assignment of errors will be voluminous and that, considering the importance of this case and the questions and matters involved therein, more and additional time is reasonably required for the aforesaid purposes.

In Testimony Whereof, witness the signature of this affiant this 5th day of January, 1944.

Affiant (Counsel for Thomas Henry Robinson, Jr.)

Affidavit of Robert E. Hogan

Subscribed and sworn to before me this 5th day of January, 1944, by Robert E. Hogan.

My commission expires ——————————.

——————————

Notary Public, Jefferson County, Ky.

AFFIDAVIT OF THOMAS HENRY ROBINSON, JR.

United States of America, }
State of Kentucky, } ss.
County of Jefferson. }

Comes the defendant, Thomas Henry Robinson, Jr., who deposes and says that: he is now incarcerated in the Jefferson County, Kentucky, Jail; that under date of December, 1943, he was sentenced, pursuant to a jury verdict and recommendation of said jury, to death by electrocution March 10, 1944, in the manner provided for by the laws of Kentucky; that on said December 13, 1943, this defendant filed a motion and grounds for new trial, and later additional grounds in support of his motion for a new trial, which said motion and grounds for a new trial was subsequently by this Court overruled, with exceptions to this defendant.

Affiant further states that the record in this case is voluminous; that the official stenographer's transcript of the evidence consists of in excess of 2,000 typewritten pages; that said official stenographer, or the stenographers assigned to take, and who did take shorthand notes of the testimony at said trial have not, as yet, completed the arranging and assembling of said transcript of testimony in such manner as to enable the District Judge to examine, settle or file the same as a bill of exceptions; that the trial of this case extended for a period of over two weeks—13 days of trial time—; that the issues involved are consid-

erable; that the maximum penalty of death was imposed upon this defendant; that the issues involved are important and material; that this defendant believes that grave errors were committed during the trial of this case which are of such nature as to warrant and to justify the reversal of this verdict and judgment and that the material and substantial rights of this defendant have been prejudiced, and that it is necessary that a proper and comprehensive bill of exceptions be prepared, settled and filed in this case; that, due to the above facts and to the fact that the original time of 30 days allotted by the rules for the settling and filing of such a bill of exceptions has been, and is, wholly insufficient for such purpose, and that such a bill of exceptions and this defendant's assignment of errors cannot reasonably be settled, filed, or accomplished within said 30-day period, this defendant respectfully moves the Court to enter an order extending the time in which for this defendant to file his assignment of errors, and to have settled and filed his bill of exceptions.

Witness the signature of this affiant this 5th day of January, 1944.

_____

Affiant.

Subscribed and sworn to before me this 5th day of January, 1944, by Thomas H. Robinson, Jr.

My commission expires September 8, 1946.

_____

Notary Public, Jefferson County, Ky.

DESIGNATION OF CONTENTS OF RECORD ON APPEAL—Filed January 6, 1944.

Comes the defendant, Thomas Henry Robinson, Jr., and hereby designates the following portions of the record, proceedings, and evidence to be contained in the record on appeal, as follows:

1. The indictment; all motions, orders, and entries of record, and rulings of the court thereon, together with objections and exceptions made or taken thereon or thereto; and for the purposes of an appeal the Clerk of this Court is hereby directed to copy the entire record, except the praecipes, subpoena, and return thereon, making an original typewritten copy and three clear carbon copies thereof; or in lieu thereof the printed record in the required number of copies.

2. All the evidence and proceedings of the trial and hearing of the above action, including all evidence and proceedings at said trial and hearing stenographically reported, together with such evidence and proceedings of said trial and hearing as may be incorporated in a bill of exceptions and settled and filed in this case.

Robert E. Hogan,
Counsel for Defendant, Thomas H. Robinson, Jr.

Notice of filing accepted:

Eli H. Brown III,
United States District Attorney for the Western District of Kentucky.

ORDER FILING DESIGNATION OF CONTENTS OF RECORD ON APPEAL—Entered by Judge Shackelford Miller, Jr., January 6, 1944.

Upon the motion and affidavits of the defendant, Thomas Henry Robinson, Jr., by counsel, which are hereby ordered filed, and which motion is sustained, said defendant's Designation of Contents of Record on Appeal is hereby ordered filed.

MOTION TO EXTEND TIME FOR FILING RECORD ON APPEAL AND DOCKETING THE ACTION.

Comes the defendant, Thomas Henry Robinson, Jr., and moves the Court for an order extending the time for filing the record on appeal and docketing the action.

_____

Counsel for the defendant, Thomas Henry Robinson, Jr.

Notice of filing accepted:

_____

United States District Attorney,
Western District of Kentucky.

ORDER EXTENDING TIME FOR FILING RECORD ON APPEAL AND DOCKETING ACTION.

Upon motion of Defendant, Thomas Henry Robinson, Jr., by counsel, which is hereby ordered filed and is sustained, the time for filing the Transcript of Record and docketing this case on appeal in the United States Circuit Court of Appeals for the Sixth Circuit, is hereby ordered extended to and including March 10, 1944.

Shackelford Miller, Jr.,
Judge.

January 6, 1944.

MOTION.

Comes the defendant, Thomas Henry Robinson, Jr., and moves the Court for an order extending, for a reasonable time, the time in which for this defendant to file his assignment of errors, and to have settled and filed his bill of exceptions.

Counsel for Thomas Henry
Robinson, Jr.

Notice of filing accepted:

United States District Attorney
For the Western District of
Kentucky.

ORDER EXTENDING TIME FOR FILING ASSIGNMENT OF ERRORS AND BILL OF EXCEPTIONS.

Upon motion and affidavits of the defendant, Thomas Henry Robinson, Jr., by counsel, which are hereby ordered filed, and which motion is sustained, the time in which said Defendant may file his Assignment of Errors and to have settled and filed his Bill of Exceptions, is hereby ordered extended until 4:30 P. M., February 19th, 1944.

Shackelford Miller, Jr., Judge.

January 6, 1944.

ORDER PERMITTING DEFENDANT'S APPEAL IN FORMA PAUPERIS—Entered by Judge Shackelford Miller, Jr., January 11, 1944.

An order having heretofore been entered permitting the defendant to appeal in forma pauperis to the Circuit Court of Appeals of the Sixth Circuit, I now direct that the expense of printing the record on appeal be paid by the United States, and the same shall be paid when authorized by the Attorney General, Title 28, Section 832, U. S. C.

ASSIGNMENT OF ERRORS—Filed February 18, 1944.

(The numbered pages hereafter refer to the original trial transcript, indicated "TRANSCRIPT OF EVIDENCE.")

Now comes defendant, Thomas Henry Robinson, Jr., appellant, and says that in the record, proceedings, verdict and judgment there are manifest errors, and for assignment thereof says that:

ASSIGNMENT OF ERROR NO. 1.

The Court erred in denying the motion made on behalf of the defendant, Thomas Henry Robinson, Jr., to quash the indictment prior to the trial because said indictment did not, as a matter of law, charge the defendant with a crime, or crimes, as purported to be set out in count Two of said indictment;

(a) Because the Grand Jurors, by whom the said indictment was found and returned on October 20, 1934, had no lawful evidence submitted to them, and said Grand Jurors were without right or power or jurisdiction to return the same; and because said grand jury had no legal evidence submitted to them of the matter and acts constituting the charges made against this defendant-appellant as they are included in the said indictment;

(b) Because the United States of America did not offer to or before said Grand Jurors any lawful, or other, evidence whatsoever that the defendant did not liberate Mrs. Alice S. Stoll unharmed from such alleged kidnaping and confinement.

ASSIGNMENT OF ERROR NO. 2.

The Court erred in arraigning the defendant-appellant, trying him, permitting the jury to convict him, and in imposing sentence upon him, because it is provided by Section 591, Title 18, United States Code Annotated, that where an offender is committed in any district other than

where the offense is to be tried, it shall be the duty of the judge of the district where the offender is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had; and because this defendant-appellant was committed in the Southern District of the United States Court for the Northern District of California, a district other than where the offense charged in this case was to be tried, and neither the judge of the district where this defendant was imprisoned seasonably issued, nor did the marshal execute on this defendant, a warrant for this defendant's removal to the Western District of Kentucky United States District Court where the trial was to be had; and in further support of said error this defendant-appellant says that he was illegally held in Alcatraz Island Penitentiary and applied for, and was granted, a habeas corpus by Judge Michael J. Roche, United States District Judge, Southern District of the United States Court for the Northern District of California, and it was further ordered that this defendant-appellant be released from the custody of Warden James A. Johnston, Warden of the United States Penitentiary, Alcatraz, California, and this defendant was so released in the State of California, Southern District of the United States Court for the Northern District of California without said judge of said district where this defendant was imprisoned ever issuing, or the said marshal ever executing, a warrant for this defendant-appellant's removal from said Southern District of the United States Court for the Northern District of California to the United States District Court for the Western District of Kentucky; and because after this defendant-appellant was so released in said California District he was not arraigned before any magistrate or Commissioner or Judge, but that instead he was illegally and forcibly brought from said California District to the Western District of Kentucky, and in said United States District Court, Western District of Kentucky, illegally arraigned, illegally tried, illegally convicted, and illegally sentenced.

ASSIGNMENT OF ERROR NO. 3.

Error of the Court in overruling the defendant's demurrer to the indictment on the grounds:

(a) That said indictment did not contain facts or allegations sufficient to constitute any offense against the United States of America or to charge this defendant with the commission of any offense against the laws of the United States of America;

(b) That said indictment was not sufficiently definite or certain to conform to the requirements of the Constitution of the United States of America, or to enable the defendant to properly prepare his defense;

(c) That the second count of said indictment was duplicitous, in that more than one separate and distinct offense is charged in said count.

ASSIGNMENT NO. 4.

Error of the Court in overruling motion of the defendant to allow the defendant to inquire into the proceedings and evidence of the Grand Jury which returned the indictment and to permit defendant to inspect the minutes of said grand jury and to procure testimony and affidavits from said Grand Jurors and witnesses.

ASSIGNMENT OF ERROR NO. 5.

Error of the Court in overruling motion of defendant to dismiss the indictment and prosecution, based upon the ground that the right to a speedy trial guaranteed by the Sixth Amendment to the United States Constitution had been violated by the delay of some seven or more years without affording defendant a trial, even though during all of which time the defendant was in the custody of the United States and at all times available for trial.

ASSIGNMENT OF ERROR NO. 6.

Error of the Court in sustaining motion of the United States of America to strike defendant's plea in abatement.

ASSIGNMENT OF ERROR OF COURT NO. 7.

Error of Court in overruling defendant's motion to require an election of which of counts one or two it would prosecute against this defendant.

ASSIGNMENT OF ERROR NO. 8.

Error of the Court in overruling motion of this defendant, made at the close of the presentation in chief by the United States of its evidence, for a directed verdict of acquittal of this defendant and dismissal of the indictment, because the United States wholly failed to prove the allegations charged against this defendant in said indictment.

ASSIGNMENT OF ERROR NO. 9.

Error of the Court in overruling this defendant's motion for a directed verdict of acquittal and dismissal of the indictment, made at the close of the entire case, because the United States wholly failed to prove the allegations contained in said indictment against this defendant.

ASSIGNMENT OF ERROR NO. 10.

Error of the Court in overruling the motion of this defendant, Thomas Henry, Robinson, Jr., to arrest the jury verdict and the judgment entered thereon because:

(a) The indictment does not state facts sufficient to constitute an offense against the United States;

(b) The indictment does not contain such a statement of the facts and circumstances as to inform the accused, this defendant, of the specific acts with which he is charged;

(c) The indictment upon which this defendant was tried contains such bare, naked allegations as not to meet the requirement that an indictment must fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished; and said indictment does not

charge with precision and certainty every ingredient of the crime, of which it is composed, with accuracy or clear allegations;

(d) The indictment is not free from ambiguity, and leaves doubt in the mind of this accused of the exact offense intended to be charged, and does not apprise this defendant what he is called upon to meet;

(e) The indictment, although alleging that Mrs. Stoll was not released unharmed, does not allege or charge any specific physical or bodily injuries or harms, and this defendant did not know, and could not know, what to expect or what defense he would be called upon to make to such a bare, naked, unexplained, allegation; because such allegation could have meant Mrs. Alice Stoll was injured or harmed in any number of ways, or to any number of extents or degrees, and such allegation was, and is, susceptible of any number of meanings, constructions, interpretations, and is not clear or specific;

(f) The offense charged and alleged in said indictment is duplicitous;

(g) The indictment is wholly lacking in accurate and clear allegations, and does not, and did not, warrant or permit the introduction of any evidence to sustain the allegation that Mrs. Alice Stoll was not liberated unharmed.

ASSIGNMENT OF ERROR NO. 11.

Error of the Court in overruling this defendant's Motion and Grounds for New Trial, being grounds 1 to 28 inclusive, which materially and substantially affected, and do affect, his substantial rights.

ASSIGNMENT OF ERROR NO. 12.

Error of the Court in overruling this defendant's Additional Grounds in Support of Motion for New Trial, being additional grounds 29 to 41 inclusive, which materially and substantially affected, and do affect this defendant's substantial rights, to his prejudice.

ASSIGNMENT OF ERROR NO. 13.

Error of the Court in accepting the verdict and recommendations of the jury, rendering judgment thereon, and in imposing the death penalty upon this defendant, because the entire proceedings, trial, verdict, judgment and sentence imposed were, and are, illegal and in violation of this defendant's substantial, legal, and Constitutional rights, and because this defendant's liberty and his life have been deprived him without due process of law.

ASSIGNMENT NO. 14.

The Court erred in refusing to give instructions requested by the defendant, Thomas Henry Robinson, Jr.; and the Court erred in charging the jury and when so charging the jury made unnecessary, prejudiced, biased, impassioned, and swaying remarks to the jury, which swayed and influenced said jury to return a verdict of guilty, with recommendation of death.

ASSIGNMENT OF ERROR NO. 15.

Error of the Court in refusing to peremptorily instruct the jury to return a verdict of "Not Guilty" and refusing to peremptorily enter an order of acquittal, because the Government failed to prove one or more of the necessary facts and elements in the commission of the alleged offense, in that the Government wholly failed to prove by any competent, relevant, or admissible evidence that Mrs. Alice Stoll "was not liberated unharmed"; further, because the verdict and judgment and sentence are inconsistent with that part of the Court's charge (page 2075, Tr. Evidence) in the following language:

> "A failure on the part of the Government to so prove any one of the necessary facts in the commission of the alleged offense would require that you return a verdict of not guilty."

Assignment of Errors

The indictment in this case is so defective as not to warrant or permit the introduction of any evidence upon the question of whether or not the kidnaped victim was liberated unharmed; and, there being a total failure of proof on the part of the Government of that essential and necessary fact and element in the commission of the alleged offense, an acquittal and dismissal of the indictment was required, and the Court erred in failing to peremptorily acquit this defendant, and erred in submitting this case to the jury.

ASSIGNMENT OF ERROR NO. 16.

Error of the Court in admitting testimony of witnesses:

Alice Stoll . . . . . (pp. 517 to 523, Tr. Ev.)
Berry V. Stoll . . . . . (p. 712 Tr. Ev.)
Dr. Harry Frazier . . . . . (pp. 596 to 600 Tr. Ev.)
Mrs. Douglas Potter . . . . . (p. 672 Tr. Ev.)
Fowler Woolet . . . . . (p. 1324 Tr. Ev.)

on the question of Mrs. Alice Stoll's physical condition at the time of her release from alleged captivity and subsequent thereto, to all of which such testimony the defendant at the time objected and excepted, and still excepts, because this was not, and is not, a capital case; because the indictment is too vague and indefinite to permit testimony on that question; and because the Court erred in treating it as a capital case and instructing the jury that they might recommend the imposition of the death penalty. And the Court further erred in accepting from the jury a death-penalty recommendation; and the Court further erred in imposing upon this defendant the death penalty. In support of such assigned errors, the defendant-appellant says that:

(a) The indictment charges in bare, naked, uncertain, ambiguous, uncertain, and unaccustomed language that this defendant "DID NOT LIBERATE HER UNHARMED", but said indictment wholly and completely failed, and does, fail, to allege or charge any specific phy-

sical or bodily injuries or impairments with which Mrs. Alice Stoll might have been suffering or enduring or in existence at the time of Mrs. Stoll's alleged release from captivity.

(b) Such bare, naked, unspecific allegation was, and is, susceptible of any number of meanings, interpretations, and constructions.

(c) It was error to permit this defendant to be tried, convicted, or sentenced under such a fatally defective indictment and thus be deprived of his life and liberty in contravention of this defendant's legal and Constitutional rights.

For such objections to the introduction of such testimoney on the physical condition of Mrs. Stoll upon her alleged release from captivity, see PP. 517 to 523 inclusive of the Transcript of the Evidence.

Beginning on page 517, Tr. Evidence, the following transpired:

"Q. What was your condition, Mrs. Stoll, at the time you left that apartment?

"Mr. Hogan: Wait just a minute now. If Your Honor please, that is highly objectionable in view of the fact that the condition of this indictment—I would like to be heard on that, if Your Honor please.

"The Court: All right, I will be glad to hear you. You may step up here to the bench.

(Conference between the Court and counsel.)

"The Court: Will the Reporter read the question?

(The last question written above was read.)

"The Court: Do you mean physical condition?

"Mr. Brown: Yes, Your Honor.

"The Court: Do I understand that there is an objection to that?

"Mr. Hogan: There is an objection to the answer to that question, and my objection is based upon this point. The indictment in this case is an indictment drawn in the language of the statute, or statutes, to-

wit: Sections 408 and 408 b, Title 18, of the United States Code Annotated.

"The concluding sentence or phraseology of page 3 of this indictment, just before the phrase, 'Against the peace and dignity of the United States, and contrary to the form of the statutes in such case made and provided', is the term 'and did not liberate her unharmed.'

"Now, it is the contention of the defendant that that term, 'and did not liberate her unharmed', in the language of the statute itself is not sufficient in the eyes of the law with which to notify this defendant what issues upon that subject he is called upon to meet in the proof of this case.

"An indictment is always most strictly construed against the drawer of the indictment. That is a general proposition of law and I submit it does not need any elaboration upon. That is a term which we are all familiar with, and if there need be any question about that, I am prepared to furnish the Court with ample authorities on that.

"There is another generally known proposition of law—that there cannot be introduced evidence where there are no pleadings to support it. Evidence without pleadings is just as unavailing as pleadings without evidence.

"While the term 'and did not liberate her unharmed', as I have said a moment ago, is in the language of the statute, it is not such a term as is generally understood by the courts or by those whose duty it is to interpret them; and certainly it may not be left to speculation as to what that term may mean or may include.

"The term 'And did not liberate her unharmed' could mean that she had the slightest pin-scratch on her arm. It could mean that every bone in her body was broken. It could mean that she had a black eye.

"The Court: Is there anyone in a better position to know what her condition was than the kidnaper? Was he taken by surprise when the indictment charged

that she was not liberated unharmed? Whoever the kidnaper was knows exactly what the facts were there.

"Mr. Hogan: He can only know what the facts were by what the indictment charges. When he comes into this court or any other court on an indictment, he cannot know what the proof is going to be introduced as to the nature and extent of the injuries.

"The Court: The kidnaper was there and knows what happened.

"Mr. Hogan: That is granted, Your Honor.

"The Court: Then he ought to know what the testimony is going to be.

"Mr. Hogan: But the burden should not be on him to overcome a defect in the indictment. The burden is upon the government of the United States to draw and present him with a complete indictment in the beginning, so that when he comes into court he is prepared to meet what is set out in that indictment.

"The Court: I think a motion for a bill of particulars might have been asked for by you. If you think the term is ambiguous, if you want to know in what respect she was harmed, whether it was a broken arm or a scratched face by a pinpoint, you may have asked for a bill of particulars, but I don't think you need one in this case.

"Mr. Hogan: But my point is—I surmise that the Court, in taking the contrary view a moment ago was going to say to me that that could have been gotten by a bill of particulars and, meeting that situation, I will refer the Court to a case which said that would be a futile and useless thing, and would not serve to make an otherwise imperfect indictment any better than it was in the very beginning.

"The Court: Of course, if an indictment is imperfect, a bill of particulars doesn't cure it; but I have no view that the term 'liberate her unharmed' is so ambiguous and so confusing that the ordinary person does not know what it means. It is very plain language. We know what 'liberate' means; and we know what 'unharmed' means, and to say that we have got to de-

fine that more closely seems to me to be a rather strained point of view.

"Mr. Hogan: It is not what Your Honor, the Court, might understand that term to be, but it is what the defendant might understand that term to be, or what he may expect to meet.

"The Court: Well I think the defendant is an ordinarily reasonable man, and would have no difficulty in understanding what that term means.

"Mr. Hogan: Now, I want to point out, further, in my argument that the indictment charges further in the language of the statute, that this defendant did knowingly transport and cause to be transported in interstate commerce a person who had been unlawfully seized, kidnapped and abducted.

"Well, now following the line of view that the Court has expressed about this term, 'liberate unharmed', I submit that there is not anybody in this court room who does not have a generally fair idea of what that term 'interstate commerce' means, but yet the legislature which passed that law came along and used up sections 408 and 408b of Title 18 to describe what is meant by the term 'interstate' or 'foreign' commerce. Now the legislature did not give any definition of the term 'liberated unharmed' or 'not liberated unharmed'. Therefore, the term being a new term and certainly came into being following the passage of this law which was passed in 1932 and amended in 1933, that term has never had much opportunity in the courts to be defined.

"Therefore, if the courts have not had an opportunity to define it, certainly the defendant, a layman, could not understand what the term means or covers in the indictment.

"The Court: I understand your point, Mr. Hogan, and I believe on account of your being counsel in this case it was your duty to make it, and you have made it; and to argue it, and you have argued it. It is highly technical from my point of view and I don't think that I can maintain it.

"You may take the motion as overruled and make your exception.

"Mr. Hogan: That is all right—I mean, it is not really all right, but it is all I can do about it; and I will have to reserve my exceptions.

"Q. Now, Mrs. Stoll, at the time you left that apartment—

"Mr. Hogan (Interrupting): Now Mr. Brown may I interrupt? I don't want to be obnoxious and every time a question about her injuries might be brought up to interpose an objection, but I would like to have it understood that any time any question of her injuries or any extent of her injuries or what she claims her injuries to have been at the time she was liberated is brought up, I would like to have the record note my objection to that.

"The Court: I understand that it is based on the same point that you have just made?

"Mr. Hogan: On the same point.

"The Court: But if you have any additional points to make, they should be made. Unless an additional point is made, we will understand that it is based on the same point that you have just argued without having to renew your objection.

"Mr. Hogan: Yes, sir, without my taking an exception each time.

"The Court: And likewise overruled, and likewise you are excepting.

"Mr. Hogan: That is right.

(P. 523 Tr. Ev.)

"Q. All right, Mrs. Stoll, will you tell the jury what was your physical condition at the time you left that apartment on October 16, 1934?

"A. My head was still thickly clotted with blood and I was in a very weakened condition. I could hardly walk a block.

"Q. What was the condition of your mouth?

"A. I still had raw sores on my lips from the adhesive tape that had been put on and off so much."

(Mrs. Stoll did not say such injuries were inflicted upon her by this defendant.)

For rulings on such objections, and exceptions which were reserved, see likewise PP. 517 to 523 inclusive of the Transcript of the Evidence.

ASSIGNMENT OF ERROR NO. 17.

There was no evidence whatsoever that any of the injuries or evidence of injuries claimed to have been in existence and being suffered by Mrs. Alice Stoll at the time of her alleged release, and about which the Court erroneously admitted evidence, were inflicted upon Mrs. Stoll by this defendant, or that they were the result of any act done by this defendant or committed by this defendant upon the person of Mrs. Alice Stoll; and because of such total lack of evidence the Court erred in charging the jury that they might recommend the imposition of the death penalty. And even if Mrs. Stoll was shown to have injuries or evidence of injuries at the time of her alleged release, there was no evidence whatsoever by any witness which connected, or even tended to connect, her then condition to this defendant or to any act which this defendant, allegedly, previously had committed upon or against Mrs. Stoll.

Because Mrs. Stoll (P. 523 Tr. Evidence) merely related what her physical condition was upon release without saying, or even attempting to say, who was responsible for her then condition.

Because Dr. Harry Frazier (PP. 596-600 Tr. Ev.) merely detailed her injuries, but was not permitted by the Court to say what caused, or what could have caused the conditions he described, and Dr. Frazier attributed to Mrs. Stoll many more injuries than she, herself, claimed to be suffering from at the time of her alleged release, and it would be pure speculation how she received any of the injuries Dr. Frazier found her to be enduring.

Because Mrs. Douglas Potter (p. 672 Tr. Ev.) was permitted, over objection, to detail Mrs. Stoll's condition, but which condition was not ever connected up to, or at-

tributed to, this defendant or to any acts committed by this defendant upon the person of Mrs. Stoll.

Because Berry V. Stoll (p. 712 Tr. Evidence) was likewise permitted, over objections, to detail such physical condition of Mrs. Stoll, but which condition was likewise never connected up to anything done by this defendant.

Because Fowler Woolet (p. 1324 Tr. Ev.), though detailing that Mrs. Stoll was highly nervous, did not connect up her then condition with this defendant.

Because no witness whatsoever connected up Mrs. Stoll's claimed physical condition upon release with any acts of commission or omission to this defendant, and it was grave and prejudicial error for the Court to permit the jury to consider any such evidence of Mrs. Stoll's physical condition on release.

It was likewise grave and prejudicial error for the Court to speculate on how Mrs. Stoll sustained the injuries which, it was alleged, were in existence upon her release.

It was grave and prejudicial error for the Court to accept from the jury a death-penalty recommendation and to impose the death penalty upon this defendant when there was a complete lack of any competent, relevant, material evidence attributing to, or connecting up, this defendant the responsibility for the physical condition of Mrs. Stoll upon her alleged release from captivity.

ASSIGNMENT OF ERROR NO. 18.

Error of the Court in accepting the jury's recommendation that the death penalty be imposed, and in imposing the death sentence upon this defendant, based upon what was said by this defendant of his relations with Mrs. Stoll, which the Court considered as untrue, because:

(A) The Court (pp. 2144 and 2145) stated its views on that question in the following language:

> "It seems to me that this jury would never have recommended the death penalty in this case except for the effect which they gave to the defense that the

defendant made representing the relations between him and Mrs. Stoll. I believe if that contention had not been made, this jury would never have recommended the death penalty. That is only my view, but from my experience and from my own thought in the matter, I doubt very much, even if they had made such a recommendation, the Court would have considered it, except for the testimony on the part of the defendant, which I am accepting as untrue as the jury so found it and, as I have stated, at the time I thought the government's evidence overwhelmingly supported their contention in the matter."

(B) The quoted statement from the Court establishes conclusively that the Court believed the jury recommended the death penalty because of defendant's testimony concerning relations with Mrs. Stoll, and that the Court believed such testimony to be untrue and, because it so believed, accepted the jury's recommendation and imposed the death sentence.

(C) The jury and the Court recommended the death penalty, and imposed the death penalty, respectively based upon what this defendant said of and concerning his relations with Mrs. Stoll, rather than what he was charged with doing in the indictment, for which actions of the Court and the jury there is no justification, and the Court and the jury have erred to the great prejudice of this defendant; and the verdict of the jury, the judgment of the Court, and the sentence imposed upon this defendant are unlawful.

(D) This defendant was not indicted for telling an untruth concerning his relation with Mrs. Stoll, but rather for a violation of section 408-a of title 18, U. S. C. A., and such a conviction based upon a belief that this defendant told an untruth concerning his said relations with Mrs. Stoll and such a judgment and imposition of sentence based upon such a belief are at total variance with the accusations contained in the indictment in this case.

(E) The defendant was convicted and sentenced for what he said rather than what he did or is charged with

doing by the indictment, and such conviction and sentence are unlawful and the result of bias and prejudice of the jury and of the Court. All of the foregoing to the great prejudice of this defendant.

ASSIGNMENT OF ERROR NO. 19.

The sentence imposed upon this defendant is too harsh and unjustified, and wholly out of proportion to the weight of the evidence. All of which greatly prejudiced this defendant's substantial rights, and all of which contravenes and does violence to this defendant's Constitutional rights.

ASSIGNMENT OF ERROR NO. 20.

Caustic, highly inflammatory, unwarranted, and incompetent remarks and argument to the jury by the District Attorney and Assistant District Attorney, which were calculated to, and which did, unreasonably inflame and prejudice the jury against this defendant.

Remarks of Assistant District Attorney Inman:

(pp. 1973 and 1974 Tr. Ev.)

"Consider these facts. Consider this crime. Consider the viciousness of it. Consider the punishment that should be meted out. The Court will advise you that you act in an advisory capacity; that if you return a verdict of guilty and recommend a penalty of death, that will be advisory and then the Court will then determine in his own wisdom and in his own mind what the penalty shall be.

"If you return a verdict of only, 'We the jury find the defendant guilty', without making a recommendation, then you have tied the hands of this Court. The Court then has no power to impose the death penalty even if he concluded it should be imposed. Return this case to this court giving to the judge of this court the power to, in his wisdom, impose any penalty that he thinks should be imposed. Do that by returning to this

court a verdict, 'We the jury find the defendant Thomas Henry Robinson, Jr., guilty, and recommend punishment by death.' "

Because such remarks greatly influenced the jury and caused the jury to be swayed into recommending the imposition of the death penalty.

Remarks of District Attorney Brown:

(p. 2063 Tr. Ev.)

"I think the hardest thing I have ever done in my life, and a day that I will always remember, was when I explained to Mrs. Stoll what she would probably have to face. I told her that I didn't know it, but I suspected it. I can see the horror and the disgust and the loathing that came over that little woman's face that night. That had never occurred to her before. She turned to me finally and said, 'Someone has to do it. I might as well be the one.' And so, I put her on that stand. You saw her, how shaken she was. You heard her story. If I have ever heard a truthful story, that was one."

Because such remarks had no basis in evidence, there being no evidence upon that; because purely hearsay; and because such remarks were calculated to, designed to, and did, have a telling, swaying and decisive effect upon the jury as a whole, which was reflected in their verdict, and because when said remarks were being made juror Will Lee Mattingly was so affected that he shed tears, and because said Will Lee Mattingly was foreman of the jury which returned the verdict in this case, all of which materially affected the substantial rights of this defendant, to his prejudice.

Remarks of District Attorney Brown:

(pp. 2065 and 2066.)

"We were stymied how to find a person named Allen, how to find some people named Palmer. When

there was, oh, so little time left. So we started out that night to work, and we finally found some people named Palmer had operated a tourist camp in Nashville. We checked there and found they lived in Atlanta. We found a man named Allen that had operated it now lived somewhere in the Portland Avenue section of Louisville. That's all we had to go on. A good woman's reputation opens all doors. When we explained what we were up against to the people interviewed, we found a response that to me was simply amazing. On the telephone, I had no power to bring Mr. and Mrs. Palmer up here from Atlanta, over the telephone, no power at all. They were busy people, they were people of affairs, they had their own business in Atlanta, and here I, some person they had never heard of before, when the F. B. I. had finally located them, on the telephone, asking that they come, 'I can't, Mr. Brown. We are busy.' 'You must come. It will help save a good woman's reputation.' These people asked no more. They said, 'We will come. We will come on the first train, and we will stay there, if we can save that woman.' And so we found the camp known as the Beech Grove tourist camp was not even in existence at the time this vile story was told."

Because said statement had no basis in evidence, and was, and is purely hearsay, and prejudicial to this defendant's substantial rights; and because made to inflame and prejudice the jury and because said remarks did so inflame and prejudice said jury against this defendant.

Remarks of Asst. District Attorney Inman:

(p. 1969 Tr. Ev.)

"The tourist camp where the sign is out front—the place where he said he took her, and the evidence shows, Members of the Jury, that that was a deliberate and diabolical lie, and it cannot be branded anything else. The place was not there. The cabins were not there. The first brick purchased to build those cabins was August 26, 1931, and since last Monday

when the defendant took that stand and told that diabolical lie, the Agents of the FBI have been able to produce here in this court records and witnesses —records of the brick company that furnished the brick;

(p. 1970)

"He told you last Monday that he took Alice Stoll on two occasions to a cabin that they rented at the Beach Tourist Camp and those acts of intimacy took place, he told you, at the Beach Grove cabin. That proved that he was a liar on that occasion as he has on other occasions,"

(p. 1973)

"As he sat there he told you what has been proven to be a diabolical lie, you saw he didn't bat an eye and you can reasonably assume from that, that having told one, without any compunction told a lie designed to serve his aim and to tear down the reputation of Mrs. Stoll, having seen him tell that lie, having heard him as he told it, and having seen the proof that it could not be true, the reasonable inference is that there is no reason to believe anything this kidnaper says in his own behalf."

ASSIGNMENT OF ERROR NO. 21.

Unfair comments on the testimony by the Court, which prejudiced the jury and influenced the jury to find this defendant guilty and to recommend the imposition of the death penalty (pp. 2076-2083 Tr. Ev.) because such unfair comments were designed to, and did, destroy this defendant's defense that Mrs. Alice Stoll had not been unwillingly transported in interstate commerce after having been held, allegedly, for ransom or reward; and because it destroyed the defense that Mrs. Stoll was not in a harmed or hurt or injured condition at the time it was claimed she was released from captivity; and because such comments unduly and unfairly stressed to the jury that

this defendant admitted writing a typewritten letter sent to the intermediary which started with the sentence: "I am the kidnaper of Alice Stoll"; and because the court unfairly commented:

(p. 2083 Tr. Evidence)

> "On this disputed question of fact, the evidence in my opinion is overwhelmingly in favor of the Government's contention that the transportation from Louisville, Kentucky, to Indianapolis, Indiana, was unlawful and against the will of Alice Stoll."

because such comments not only stressed that there had been an unlawful transportation, but unfairly stressed that defendant had admitted being the author of a letter which admitted that this defendant was the kidnaper of Alice Stoll; and because such comments were not only unfair but were unwarranted because the Government failed to satisfactorily, or at all, prove that any transportation of Alice Stoll in interstate commerce took place after Alice Stoll had been held for ransom or reward.

Unfair comment of the Court upon this defendant's insanity plea and upon this defendant's medical expert witnesses, Drs. Crice and Solomon, not being members of the Jefferson County Lunacy Commission, because such comments were designed to, and did, destroy and tear down and render ineffective this defendant"s insanity plea and the weight of the testimony of Doctors Thomas J. Crice and Leon L. Solomon on the issue of this defendant's insanity; and because the Court went to an unreasonable length to comment upon bits of the testimony bearing on this defendant's insanity and incapacity to commit the offense charged in the indictment (pp. 2089 to 2095 Tr. Evidence).

ASSIGNMENT OF ERROR NO 22.

Error of the Court in charging the jury that it was necessary for them to give further consideration, in case they found defendant guilty, to whether or not the jury

should recommend punishment by death, because this was not, and is not, a capital case; and, even though it be decided it is a capital case, there was no competent evidence, or any evidence, tending to show that Mrs. Alice Stoll was suffering from any injuries, upon her release from captivity, that had previously been inflicted upon her by this defendant. Said charge is as follows (pp. 2094-2097 Tr. Evidence):—

> "Your first duty, members of the jury, will be to attempt to reach a verdict in this case of either guilty or not guilty. If your verdict is not guilty, it should read, 'We, the jury, find the defendant not guilty', in which case your deliberations will cease and you will return such verdict into court. If, on the other hand, it should be one of guilty, then it will be necessary for you to give further consideration as to whether or not the jury shall recommend punishment by death. I direct your attention again to the provisions of the federal statute controlling this phase of the case, which reads, 'shall upon conviction be punished, first, by death, if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if prior to its imposition the kidnaped person has been liberated unharmed.'
>
> "In the federal courts, the sentence following a verdict of guilty is fixed by the court within the limits provided by the applicable statute and not by the jury. This applicable statute in the present case still vests that duty in the court, but it also provides that the jury may, upon finding a verdict of guilty, recommend punishment by death under certain conditions as hereinafter referred. If no such recommendation is made by the jury, the court cannot impose a sentence of death. If such a recommendation is made by the jury, it is not binding upon the court, but will, of course, be given careful and serious consideration by the court in imposing sentence. Keep in mind, therefore, that if your verdict should be one of guilty, that you have the further duty of deciding whether or not you shall

recommend to the court punishment by death. Whether or not such a recommendation should be made calls for an exercise by the jury of discretion and an evaluation of mitigating circumstances. It would be your duty to determine whether the defendant, in view of all the circumstances surrounding the commission of the crime, merited the death penalty. In exercising this privilege whether or not such a recommendation should be made, you are not bound by rules of law, but will make your own appraisal of the character of the conduct of the defendant as evidenced by his acts which were related to the commission of the crime with which he is charged.

"Also keep in mind that you cannot recommend punishment by death if the kidnaped person has been heretofore liberated unharmed. The kidnaped person in this case was Mrs. Alice Speed Stoll. She has been heretofore liberated by the kidnaper and returned to her home. But this still leaves for your decision whether or not she was liberated unharmed. In considering and deciding this issue of fact, I instruct you that the statute, reasonably interpreted in the light of its purpose, refers to the condition of the kidnaped person at the time of her release. It bars the death penalty and also any recommendation by the jury to that effect if the kidnaper has released the kidnaped person unharmed, even though the kidnaped person may have received injuries during captivity from which she had recovered at the time she was liberated.

"Accordingly, if your verdict is one of guilty, and upon consideration of the question of whether or not any recommendation of punishment by death shall be made to the court, it is necessary for you to first decide whether or not Mrs. Alice Stoll was liberated by the kidnaper unharmed. The word unharmed will be given by you its usual and ordinary meaning attributed to it in the ordinary use of the English language. It means not harmed by the kidnaper during the commission of the offense or while in the custody

of the kidnaper prior to liberation by him. The usual and ordinary meaning of the word harmed is hurt, or injured, or damaged. If you find that Mrs. Alice Stoll was liberated unharmed by the kidnaper, you cannot recommend punishment by death even though your verdict is one of guilty. If on the contrary you find that Mrs. Alice Stoll was not liberated by the kidnaper unharmed, you then give further consideration to whether or not in your judgment and discretion you decide to recommend punishment by death in accordance with the instructions hereinbefore given to you.

"If your verdict is one of guilty and you decide to recommend punishment by death, your verdict should read, 'We, the jury, find the defendant guilty and recommend punishment by death.' If your verdict is one of guilty and you decide to make no recommendation, your verdict will read, 'We, the jury, find the defendant guilty', and no more. Any verdict that you may reach in this case, one of not guilty, one of guilty without recommendation, or one of guilty with recommendation, must be a unanimous verdict, that is, must be agreed upon by all twelve of your number. It will be signed by one of your number whom you designate as your foreman."

Because such instruction or charge is the vehicle which enabled the jury to recommend, and the Court to impose, the death penalty upon this defendant, and because such instruction was unwarranted, and unjustifiably given to the jury.

ASSIGNMENT OF ERROR NO. 23

Error of the Court in admitting, over the objection of defendant, and to which exception was duly taken, evidence of the commission of prior crimes by this defendant, and of the fact that this defendant was indicted for such prior crimes, or, if not indicted, that he was charged with some prior offenses (pp. 1172 to 1181 Tr. Evidence), be-

cause such evidence was incompetent, irrevelant, and highly prejudicial, and because evidence of other offenses is never admissible upon the trial of the offense being tried; and, because even though such evidence be held to be admissible to establish a plan or scheme, it was too far removed in point of time to be admissible, and because such evidence does not establish that this defendant ever before transported in interstate commerce a person who had been kidnaped or held for ransom or reward, and to be admissible, if it is, as showing the commission of a similar crime, the other offenses must be identical with the crime charged in the indictment, and closely connected up in point of time, which they were not. (See also pp. 1204 to 1207 Tr. Evidence).

(p. 1173, Tr. Evidence):

"Q. Wasn't that a device upon the part of yourself and your father and your family to escape criminal prosecution for the robbery of the home of Mrs. C. C. Wagner and Mrs. Mary C. Lamb?

"Mr. Hogan: I object to that, if Your Honor please.

"The Court: Members of the Jury, the question refers to a possible commission of another offense by this defendant.

"Ordinarily evidence of another offense at a prior time is not competent for a jury to consider because the fact that a man may have committed another offense is not evidence that he committed the offense charged. But in certain instances there are exceptions to that rule, and where collateral issues come into play and are before the jury for decision, such evidence may be considered on collateral issues.

"Now, the question was asked, and will be permitted to be asked and to be considered by you, and the answer thereto, with reference to this collateral issue as to any possible motive for the insanity proceedings; and it will be considered by you exclusively on that point, and it will not be received in evidence on any other point; but I will let it be admitted as bearing on that question which was directed to the

witness.

"Mr. Hogan: Your Honor, I think I should state the basis of my objection. My objection is based upon the ground that it is improper to prove the commission of any prior crime other than the one for which he is on trial.

"The Court: The rule which you state is the generally accepted rule which I have just told the jury about and I repeat, there are exceptions to that where that evidence can be introduced bearing on a collateral issue that is before the jury and it will be considered solely as bearing on the question as directed to the witness.

"Mr. Hogan: Exception.

"Q. Now, I will ask you, Mr. Robinson, if in March, 1929, you went to the home of Mrs. Mary C. Lamb, at that time residing at 2413 Jones Avenue in Nashville, Tennessee; that you called at her residence; that you were met at the door by her maid; that you exhibited a badge to the maid, stating that you desired to see Mrs. Lamb; that you told Mrs. Lamb that you were a Deputy Sheriff; that you informed Mrs. Lamb that you wanted to search the house for illegal liquor; that Mrs. Lamb protested your action and desired to call her husband on the telephone; that you denied this request of Mrs. Lamb; and that Mrs. Lamb and her maid were compelled to be seated in the front room while you proceeded with your search; that at the time you entered that house you had a gun in your belt; that you searched the home of Mrs. Lamb, particularly the bed room; that during the time of the search the telephone rang on two separate occasions; that you did not permit Mrs. Lamb to go to the telephone but you instructed the maid to answer and tell the person calling that Mrs. Lamb was too busy to talk; that you on that occasion made a thorough search of the residence; that you did not make a thorough search of the residence but confined your search to the bed room; that upon completing the search you demanded to Mrs. Lamb to know where her car was parked; that you

demanded of her her keys; and that you ordered Mrs. Lamb and her maid to go to the attic; that you drove away in that car and you took with you the majority of the jewels of Mrs. Lamb and her mother, Mrs. Elmo Love Gee. Is that correct?

"A. That is correct in most details. I did not have a gun on my belt and that I went into the house to obtain whiskey—

"The Court (interrupting): Is that correct or incorrect?

"Witness: I said it was correct in most details except for the gun and that I went into the house for any whiskey that I thought was in there or that was the primary object in going in.

"Q. And that thereafter you and your father, Thomas H. Robinson, Sr., requested Mr. Elmo Love Gee, husband of the woman whose jewelry you took and the father of Mrs. Lamb, not to prosecute on those charges, that full restitution would be made—

"Mr. Hogan (Interrupting): Now that is objected to on the basis of what his father might have done.

"Mr. Brown: Well I am asking him if he knows.

"The Court: It is just directed to what he knows.

"A. I do not recall any statement my father made to Mr. Gee—no.

"Q. Were you a Deputy Sheriff at that time?

"A. No, I wasn't.

"Q. And I will further ask you if that in March in 1929 that you did go to the home of Mrs. Nellie White Wagner at that time residing on Woodlawn Drive, in the City of Nashville, Tennessee; that you represented yourself to Mrs. Wagner again to be a Deputy Sheriff; that you exhibited to Mrs. Wagner a fake search warrant; that you told Mrs. Wagner that you were going to search the house for whiskey and that Mrs. Wagner objected; whereupon you seized her forcibly as she was attempting to call her husband over the telephone; that then you locked Mrs. Wagner and her maid in a room; that you searched her house and stole jewelry to the value of several thousand

dollars; that while you were searching the house the telephone rang; that you did not permit Mrs. Wagner to answer the telephone but instructed the maid to do so; and that you told the maid to inform the person calling that Mrs. Wagner was too busy to answer the telephone; that at the time you were in Mrs. Wagner's home that you demanded to know of Mrs. Wagner concerning certain wires about the premises; and that you were told that one wire led to the servants telephone; and that the other was an electric wire to the garage. Didn't that happen?

"A. There was nothing said about any wires.

"Q. Oh, then the only things that didn't happen—

"A. (Interrupting) Everything else is substantially correct, that is true. But nothing was said about any wires or any telephone or anything else.

"Q. Now then I will ask you if some months later, to-wit, June, 1929, you were not identified by Mrs. Wagner and Mrs. Lamb as the person who had perpetrated the crime in their home and, as a result of the arrest and indictment, that you, together with members of your family, didn't cook up this insanity scheme to avoid going to the penitentiary?

"A. That is not true.

"Mr. Hogan: That is objected to.

"The Court: The objection on the same ground as before, and the jury will be told again that this evidence is received on the collateral issue which is involved in this case, and not as evidence that he committed the particular crime with which he is charged here; but it can be considered by the jury on the collateral issue which has been raised by the defendant's testimony.

"Mr. Hogan: Exception.

"Q. I will ask you if in May, 1929, you were not indicted by the Grand Jury of Davidson County, Tennessee, charging, in legal language, the offense that you have heretofore testified about?

"A. That's correct.

"Q. And if it wasn't after that for the first time

that you had this lunacy inquest that you testified about yesterday?

"A. Yes, it was subsequent to the offense charged in that indictment.

"Q. The lunacy inquest was.

"A. Yes.

"The Court: The jury will keep in mind that the evidence as to that indictment is limited to the same issue that I indicated before, not to the main issue as to whether or not this defendant is guilty of the offense charged in this case.

"Q. Now then, is it not true that an indictment was returned against you involving, in legal language, the offense that you have testified about that was committed by you at the home of Mrs. Lamb, and wasn't that also prior to the time of the lunacy hearing in the Criminal Division of the Davidson Circuit Court?

"A. I thought that was in the same indictment. I may be mistaken.

"Q. Well, it was prior.

"The Court: The same instructions to the jury on that question.

"Q. Now then, I will ask you if as a result of these indictments and as a result of the lunacy inquest, you were not committed to the criminal ward of the Central State Hospital.

"A. That is correct.

"Q. You were not very well pleased there, were you?

"A. Why, it wasn't a question of whether I was. My family wasn't. I wasn't getting the proper kind of treatment there.

"Q. And you desired to be removed from the criminal ward of Central State Hospital to another ward, did you not?

"A. No. I think I wanted to—at least, my father wanted for me to get some fresh air and sunshine and the proper treatment that was indicated for the type of insanity that I had.

"Q. Now then, I will ask you—you have testified

that there was a second lunacy hearing in the spring of 1930 following which you were transferred to the Western State Hospital at Bolivar, Tennessee.

"A. That is correct.

"Q. Now, as a matter of fact, Mr. Robinson weren't the criminal charges nolle prossed against you on the 9th day of May, 1930, and it was a result of that nolle pross that you could no longer be held in the criminal ward, but as a result of that you could demand to be transferred to the Western State Hospital at Bolivar?

"Mr. Hogan: Now, he wouldn't know about that.

"Mr. Brown: Well, if he does know.

"A. Well, the only thing that I recall about that is the State of Tennessee agreed to nolle pross the criminal charges so that I could receive the proper treatment in another institution, which included fresh air, sunshine, and exercise, which I wasn't getting in the Central State Hospital.

"Q. But you were transferred to the Western State Hospital at Bolivar.

"A. I was."

AND THE ADMISSION OF such testimony was further error because, while the Court ruled that it was being admitted upon the collateral issue only of insanity, its admission was but a subtle means of the Government getting before the jury otherwise incompetent evidence of the commission of prior offenses by defendant, which admission of such evidence prejudiced and influenced the jury against this defendant; to the admission of such incompetent evidence, the defendant at the time objected and excepted, and still excepts.

ASSIGNMENT OF ERROR NO. 24.

Error of the Court in admitting into evidence a letter dated July 1st, 1936, written by this defendant to Mr. Bates, while this defendant was an inmate of the Federal Prison at Leavenworth, Kansas, because said letter was written

at a time when this defendant was presumably insane, and was insane; was written by this defendant before he had ever been legally arraigned; was written by this defendant at the suggestion of Warden Zerbst of Leavenworth Penitentiary and the prison psychiatrist; was written pursuant to, and in consideration of, inducements held out to this defendant; and was written by this defendant, while relying upon said promises and inducements, so that this defendant might be permitted to get out of the isolation *section of the Leavenworth Penitentiary; and said letter* was not written voluntarily. (pp. 1181 to 1189 Tr. Evidence); to the introduction of such letter and evidence the defendant at the time objected and excepted, and still excepts.

In that connection the following transpired:

"Q. I'll hand you a letter dated July 1st, 1936, and ask you if you wrote that letter and if that is your signature, and if everything on that letter isn't yours with the exception of the red underscoring which has been added apparently later.

"Mr. Hogan: May I see it?

"Mr. Brown: Yes, let him identify it. If he doesn't identify it, it won't be used.

"A. Why yes, I wrote that letter to Mr. Bates.

(At this point the letter was handed to Mr. Hogan for examination.))

"Mr. Hogan: Your Honor, I object to this letter because it is in the nature of a confession or admission, and it is certainly objectionable because he was insane and had been adjudicated insane and had never been restored, and an insane person cannot legally make any statement that is against his interest.

"The Court: That's one of the questions in this case, isn't it?

"Mr. Hogan: And it has not been brought out as to whether or not any promises were made to him, or if there were, what they were, or whether there were not.

"The Court: I imagine the District Attorney will qualify the letter before it is introduced. He will have to, of course. I imagine if it is in the nature you say it is, I haven't read it, I don't know, but it seems to bear, at least, on the issue we have as to whether or not this defendant was sane or insane at that time. For the present I will admit it on that issue. Later it may be admissible on other issues, but it will be limited for the present, at least, along the discussion that we have had on other questions bearing on the issue of the defendant's sanity.

"Q. You wrote this letter to Mr. Bates yourself?

"A. I did, at the suggestion of the Warden of Leavenworth Penitentiary.

"Mr. Brown: I would like to read this letter to the jury: "July 1st, 1936. Dear Mr. Bates.'

"Mr. Hogan: He hasn't yet qualified it, as to whether or not—

"The Court: All right. Ask him further questions, Mr. Brown.

"Q. Mr. Robinson, didn't you communicate with Mr. Bates without any solicitation from Mr. Bates, and if Mr. Bates at that time wasn't the Director of the Bureau of Prisons, and I will ask you further if you didn't communicate with him of your own free will and accord, attempting to gain the privileges and concessions outlined in this letter.

"A. That letter, as I stated before was written at the suggestion of Warden Zerbst at Leavenworth Penitentiary and the prison psychiatrist who at that time—I don't recall his name—he was the psychiatrist at Leavenworth.

"Q. Dr. Singleton?

"A. If I may be permitted to explain the circumstances surrounding that, I would be glad to.

"Mr. Brown: I submit it is certainly competent.

"Mr. Hogan: Now wait a minute. Let's see here. He said it was written at the suggestion of Warden Zerbst.

"The Court: You were not required to write it,

forced or made to write it, were you?

"The Witness: I wasn't physically forced, Your Honor, but there were some inducements held out to me.

"The Court: What inducements?

"The Witness: I was at that time held in what is known as isolation in the Leavenworth Penitentiary and Warden Zerbst called me in his office and told me that as long as there was a question as to my insanity he couldn't take me out of isolation and give me a job in the regular run of the penitentiary, and he suggested that I write to the Director of the Federal Bureau of Prisons at Washington, who was then Mr. Bates, and explain to him—explain away this insanity angle in my case, and I did that and did everything in my power to convince Mr. Bates that I wasn't insane. Naturally, I wanted to overcome that stigma of insanity myself, it had always been a thing of disgrace to me and I wasn't—

"The Court: Well, at that time you did it because you wanted to do it, didn't you?

"The Witness: Yes, I wanted to get out of isolation and go to work in the penitentiary like the rest of them did.

"Mr. Brown: I submit the letter is competent.

"Mr. Hogan: Could you have gotten out of isolation if you hadn't written the letter?

"The Witness: Warden Zerbst stated that as long as there was any issue—

"The Court: Now just a minute. We are getting into hearsay again, what Warden Zerbst said.

"Mr. Hogan: It is certainly bearing on the issue—

"The Court: I don't care what it is bearing on. It is hearsay. We have been keeping hearsay out.

"Mr. Hogan: Well, if Your Honor please—

"The Court: All through the trial of this case, Mr. Hogan, you have objected every time the Government tried to get in hearsay testimony.

"Mr. Hogan: I certainly did.

"The Court: And the rule has been applied at your

instance, and it is going to be applied in this instance, too. Hearsay, if it is inadmissible on the Government's part, it is inadmissible on your part.

"Mr. Hogan: I think what we should do then, is not to have this evidence before the jury, and let's have the question of the—

"The Court: I can't hear hearsay evidence any more than the jury can hear it.

"Mr. Hogan: No, but I mean as to whether this letter was written voluntarily or with some hope or promise of reward or immunity, because that bears directly upon whether a statement of any kind—

"The Court: I think the witness has testified that he wrote it because he wanted to change his condition. You were not promised any monetary reward of any kind, were you?

"The Witness: No, but I was promised this, that the prison psychiatrist, who as he said was Dr. Singleton, at that time told me that as long as there was any question as to my insanity I would never make parole.

"The Court: You were doing it to clear up the question of your sanity, weren't you?

"The Witness: Well, I was attempting to show that I wasn't insane because I wanted to make parole, and I also wanted to get out and go to work.

"Mr. Hogan: If your Honor please, I suggest that that's the hope they held out to him.

"The Court: Objection overruled.

"Mr. Hogan: Exception, please.

"The Court: I am telling the jury that I am admitting it at the present time as bearing on the defendant's sanity or insanity, not to be considered at the present time on any other issue.

"Mr. Brown (reading):

"Leavenworth, Kansas, July 1st, 1936.

"Dear Mr. Bates:

"'Up until now I was not familiar with the fact that letters to your office should be sealed. I have pre-

viously written both your office and the Attorney-General's office in the hope that you would review my case and find circumstances therein that would justify you in allowing me to remain in an institution nearer home rather than be sent to Alcatraz. Mr. Bates, I have only one thought in mind for a year or more, namely, if I were apprehended that I would offer no resistance, that I would go back and take my sentence like a man, do my best to merit clemency at sometime or other, maintain the new hold I have on life and be able some day to start again all over with the girl whom I love and whose actions since my apprehension should convince anyone that she loves me dearly.

" 'I have worked for various companies since I was fourteen years of age. This is my first conviction, and I have never associated with the underworld in any sense of the word. I understand that you are deeply interested in reform movements, and sincerely so, I am sure. I have this in mind. I am finished altogether with crime of any kind. The methods the Department of Justice used in my apprehension convinces me that it is impossible to beat the law. Figures will bear out the fact that crime does not pay.

" 'Mr. Bates, among my effects in Glendale, California, was a manuscript of a book I was writing previous to my crime. It was "The Getting of a Job, a Science." I have studied that problem carefully and am well informed on it. I would like to do this. Establish a placement bureau or at least teach a class here in the ways and means of getting a job. I believe I could help direct an inmate's efforts, once he is released, along certain well defined lines that would help him get a job. Most men are at a loss as to how to proceed to get employment. I believe such a plan would suceed somewhat to cut down the number of parolees who resort to crime again because of lack of employment.

" 'I would appreciate this or some similar opportunity to get into some constructive employment. I give my solemn promise that I will not abuse any

privileges extended me.

" 'For your information, I would like to state this, that I am not a mental case, I have no psychosis, and that former decree of insanity was the result of my father imposing on his friendships. Also, I did not pose as a woman except on an occasion in Nashville as a disguise. I have no abnormal or homosexual tendencies, and am perfectly normal in that respect.

" 'I am very grateful for the opportunity I had of again seeing my mother and the girl I previously mentioned. Mr. Bates, she means everything to me. She has done more to help my return to normal living and thinking than anyone else. She is working in my behalf now, and it is to her that I will go to if and when I am released.

" 'I am conscious of the fact that I am requesting a lot, but I would like and so would she to have her name put on my correspondence list so that we may write one another and that she may visit me. I am to be immediately divorced from my present wife as we have long since ceased to mean anything to each other. My whole peace and happiness lies with this girl. This request to see her and to write her is unusual and must be referred to you, but so also are the circumstances in respect to her. May I have an expression from you?

Yours Sincerely,

Thomas H. Robinson, Jr.' "

"Q. Now, the girl to whom you were referring was the woman that has been previously testified to and identified in this direct testimony as Jean Breese, is it not?

"A. That is correct.

"Mr. Brown: I would like to introduce this as Government Exhibit No. 78.

(The letter referred to was handed to the reporter and filed with the record as Government Exhibit No. 78.)"

And because, further, said letter and said evidence was irrelevant, incompetent, and highly prejudicial, nad was improperly admitted.

ASSIGNMENT OF ERROR NO. 25.

The Court erred in overruling defendant's objection to the admission of the testimony of witness John P. Knowles, the Government's fingerprint expert, the objection being based on the ground that the fingerprints and the other evidence had not been connected up sufficiently to identify the defendant with what had been stated by that witness and other witnesses (pp. 955,, 956 and 957, Tr. Evidence), and the Court erred in overruling defendant's motion to strike from the record and to exclude from the jury certain Government Exhibits mentioned in said motion and to strike from and exclude from the jury any and all exhibits to which said witness Knowles referred; and to strike and exclude from the jury all of the testimony of said witness Knowles and strike from the evidence and exclude from the jury exhibits 68-a, 68-b and 69, and the testimony of witness Richard E. Smith (Smith's testimony, pp. 973 to 977 Tr. Evidence) (Knowles' testimony pp. 949 to 969 Tr. Evidence); because the testimony of witness Knowles and the filing of the exhibits mentioned in said motion and all such exhibits to which said witnesses Knowles and Smith referred to, were made contingent upon and subject to witness Knowles connecting up and identifying any known specimens of fingerprints with those appearing on certain exhibits which had tentatively and conditionally been filed by the Government (p. 950 Tr. Evidence); and because there was a failure to so connect up or properly identify them, and more particularly because witness Smith (p. 974 Tr. Evidence) testified that the known specimens were the fingerprint impressions of Thomas H. Robinson, Jr., and because witness Knowles testified that the fingerprints on the exhibits and documents, about which he testified, could have been made by no other person than THOMAS H. ROBINSON (p. 962 Tr. Evidence), and that they were made by THOMAS H. ROBIINSON, (who

is a person other than defendant Thomas H. Robinson, Jr.); because the indictment returned in this case names Thomas H. Robinson, Sr., Frances Robinson and Thomas H. Robinson Jr. as the perpetrators of the crimes charged therein and the said testimony of said witness Knowles that said fingerprints could have been made by no other person than Thomas H. Robinson or that they were made by Thomas H. Robinson (pp. 954, 958, 959, 960, 961, 962, 964, 965, 966, Tr. Evidence) fail to coincide or connect up with the testimony of Richard E. Smith, and such evidence and the exhibits should have been excluded, to all of which the defendant objected and excepted, and still excepts. Said motion being in words, figures and phrases, towit:

"Comes the defendant, Thomas H. Robinson, Jr., and moves the Court for an order striking from the record and to exclude from the jury and their consideration the following Government Exhibits:

Exhibit 68—(2 sheets) (later, at the suggestion of the Court marked Exhibits 68-a and 68-b.)

Exhibit 69.

Exhibit 33—Original Ransom Note.

Exhibit . .—Outside of Envelope Containing the Original Ransom Note.

All original charts and all copies of charts and photographs of charts, specimen photographs, and original negative of the outside Envelope Containing the purported original ransom note.

Negative and impressions or specimens of photographs of the inside of Envelope in which was contained the purported original ransom note;

Two photographs and all negatives of first page of purported original ransom note;

Original negative and all negative and specimen photographs of reverse side of first page of the purported original ransom notes;

Assignment of Errors

Two charts and all charts of reverse side of first page of the purported original ransom note;

Two charts and all charts of the second page of the purported original ransom note;

Reverse side of second page of the purported original ransom note;

Chart No. 1—Enlargement of right thumb impression of one of the fingerprint cards;

Chart No. 1-a—Latent impression appearing on reverse side of first page of the original ransom letter;

Original and all copies of photographs and negatives of the right thumb, Government Exhibit No. 70;

Exhibit 70-a} Negatives of the outside of the envelope;
Exhibit 70-b}

Exhibit 71-a, the negatives of the outside of the envelope;

71-b, inside of envelope;

71-c, the first page of the original ransom note;

71-d, second page of the original ransom note;

71-e, reverse of first page of ransom note;

71-f, reverse of second page of original ransom note;

32, letter addressed to Berry V. Stoll;

30, Envelope addressed to Miss Elizabeth McHenry;

48, Envelope addressed to 'The Custodian, etc.' and a single sheet addressed to the 'Custodian,' signed in typewriter 'Mr. Kennedy,' etc.

47, Envelope 'Important,' etc.—Pamphlet 'How to Use Corona Portable, etc.'

71-g;

71-h;

72-a, Letter from Mrs. Alice Stoll to Mr. Berry V. Stoll, in care of Mr. W. S. Speed;

72-b, with reference to the first page of the same letter, a chart, and the negative;

72-c, negative of the above;

72-d, 72-e } with reference to the envelope of the same letter, an enlargement of the envelope and the negative;

72-f and 72-g } With reference to inside of the envelope of the same letter, an enlargement;

72-h, 72-i } With reference to the first page of the same letter, an enlargement and the negative;

72-j, 72-k } With reference to the second page of the same letter, an enlargement;

72-l, 72-m } With reference to the second page of the letter, an enlargement and the negative;

73-a, 73-b, With reference to exhibits pertaining to the letter from Mrs. Alice Stoll to Miss Elizabeth McHenry, charts;

73-c, 73-d, 73-e, 73-f } With reference to the envelope in which that same letter was contained, two enlargements and another enlargement and the negative;

73-g, 73-h, With reference to the first page of the same letter from Mrs. Stoll to Miss McHenry, enlargement and the negative;

73-i, 73-j, With reference to the reverse of the first page of the letter from Mrs. Alice Stoll to Miss Elizabeth McHenry, the enlargement and the negative;

73-k, 73-l, With reference to the second page of the letter from Mrs. Stoll to Miss Elizabeth McHenry, enlargement and the negative;

73-m, 73-n, With reference to the second page of the letter from Mrs. Stoll to Miss Elizabeth McHenry, enlargement and the negative;

74-a, 74-b, With reference to the testimony concerning the letter addressed to the Custodian, the envelope, an enlargement, and the negative;

74-c, 74-d — With reference to the inside of the envelope addressed to the Custodian, enlargement and a negative;

74-e, 74-f — With reference to the front page of the letter addressed to the Custodian, enlargement as Government Exhibit 74-e and the negative, 74-f;

74-g, 74-h — With reference to the letter addressed to the Custodian, an enlargement and the negative;

75-a, 75-b, 75-c — Two enlargements and a negative, with reference to the envelope 'Important—read instructions for operating in this envelope, L. C. Smith and Corona Typewriter Company, Inc.;'

75-d, 75-e, 75-f, 75-g, 75-h — With reference to the reverse side of the same envelope, two enlargements and the negative, and the charts of the same.

"And to strike from and exclude from the jury any and all other exhibits to which said Knowles referred; and to strike and exclude from the jury all of said testimony of said witness Knowles; and to strike from the evidence and to exclude from the jury exhibits 68-a, 68-b, and 69, and the testimony of witness Richard E. Smith;

"Because the testimony of witness Knowles and the filing of the aforesaid exhibits and all such exhibits as witness Richard E. Smith and John P. Knowles referred to, was made contingent upon and subject to witness Knowles connecting up and identifying the known specimen of fingerprints with those appearing on certain exhibits which had tentatively and conditionally been filed by the United States as Government Exhibits; and because witness John P. Knowles failed to so connect them up or properly identify them, because he testified the fingerprints on those exhibits and documents could have been made by no other person than Thomas H. Robinson, or that

they were made by Thomas H. Robinson (a person other than this defendant, Thomas Henry Robinson Jr.); and because this erroneous identity is important as a ground of objection, inasmuch as Thomas Henry Robinson, Jr., and Thomas Henry Robinson, Sr., are distinct and separate persons named in the indictment in this case; and because Thomas Henry Robinson, now deceased, was tried on this said indictment and acquitted."

ASSIGNMENT OF ERROR NO. 26.

Because the Court erred in refusing to permit the defendant to contradict and impeach witness Ann Hobbs Woolet by showing that she had executed a contradictory affidavit in September, 1935, and by showing by witnesses William K. Powell, Joseph M. Hayse and Nellie Stoess Hayse that said Ann Hobbs Woolet had previously made contradictory statements and that she had signed and executed an affidavit in September, 1935, which contradicted her and her testimony.

The testimony offered by witness Powell is found on pp. 1348 to 1366 of the Transcript of Evidence; that of witness Joseph M. Hayse is found on pp. 1304 to 1312 and 1538 to 1550 of the Transcript of Evidence; and that of Nellie Stoess Hayse is found on pp. 1550 to 1560 of the Transcript of Evidence; and the testimony of Ann Hobbs Woolet, which, is in question, is found on pp. 631 to 666 and 1606 to 1614 of the Transcript of Evidence; to the rejection of which testimony the defendant objected and excepted, and made avowal. The avowal being as follows:

"The witness, Joseph M. Hayse, if permitted to answer, would say, and it is true, that Ann Hobbs Woolet came to his law office in Louisville, Jefferson County, Kentucky, on or about September 9th, 1935, and while there made oral detailed statements of, about and concerning the facts of the Robinson-Stoll kidnaping case, facts before the taking of Alice Stoll from her home, and facts that happened in the Speed

home, and facts that happened after Mrs. Alice Stoll's return on October 16th, 1934, in the home of Alice Speed Stoll on Lime Kiln Road; that the witness, Nellie Stoess Hayse, if permitted to answer, and it would be true, would say that Ann Hobbs Woolet came to her home, being also the home of the witness, Joseph M. Hayse, at that time located on Confederate Place, in Louisville, Kentucky, nad that Ann Hobbs Woolet made certain oral statements to her of, about and concerning the Stoll kidnaping case before and after the taking of Mrs. Alice Speed Stoll and after her return in October, 1934; that the witnesses, Joseph M. Hayse and Nellie Stoess Hayse, would say that Ann Hobbs Woolet's statement to Nellie Stoess Hayse were taken by Nellie Stoess Hayse in shorthand and later transcribed by Nellie Stoess Hayse on the typewriter into a written statement, and by Mrs. Ann Hobbs Woolet signed, subscribed and sworn to by Ann Hobbs Woolet on September 9th, 1935; that the witnesses, Joseph M. Hayse and Nellie Stoess Hayse, would say further, if permitted to answer, and those statements would be true, that the statement given to Joseph M. Hayse in his office by Ann Hobbs Woolet and the statement given to Nellie Stoess Hayse and Joseph Hayse in the Hayse home on Confederate Place is in substance, in words, figures, and phrases, to-wit:—

'Before this time, she calls me up there. and wants me to bring her some pumpkin seed and I took them up there, and Robinson comes up and smiles at her, I thought it was just politeness then. She didn't look at him mean or anything, but just looked at him, I suppose you would call it a faint smile, but didn't crack her face. She didn't seem frightened or frantic, and was very calm. She must have known him before, as she didn't appear frightened, and did so much talking and kept her nerve, and she asked him what he was going to do there, I don't remember the exact words. I don't believe she made any reply to that right at that time. I think she just sort of sat and looked at him, sort of like she was thinking. She didn't

seem to be particularly excited, or disturbed about it. I don't know who said it, but I know she wanted to offer him a check, and he wouldn't have that, of course. While she was sitting there in a rocking chair. He is nervous, he is afraid Berry Stoll is coming in there before he gets away, she seems to be in a hurry, I guess you call it, and he wants to hurry up and get away, get her all wrapped up before Berry comes home, and then she said "hurry" or "let's go," or something to the effect, showing that she was willing to go.

'Mr. John Tarrant, lawyer for the Stolls, Mr. Stoll came down and told me that they wanted the house cleared out, and everybody away, and John Tarrant took us to W. B. Speed's over on Lexington Road. Mrs. Speed entered the door and took us up to the servant's uarters and put us in a very cool room, a cold room. Just had a little bed and a dresser in there, nad I thought I was in jail for sure, it was so bleak looking. It was in the early evening, about 5 or 6 o'clock. We didn't want to stay there, I just couldn't stand it, and I felt that I wanted to see my mother, so bad, so I cried and took on pretty bad, and we wanted to leave, and Mrs. Speed wouldn't let us leave, she said, "There have been orders for you to stay here," and she had our supper sent up to us, then along about 8 o'clock, Mrs. Speed comes in and tell us "Alice has been returned," and she didn't act very thrilled, just calm. They had told us in the afternoon that she was going to be returned, that is why we had to leave the house.

'After that we went to bed, and we spent the night there, and the next morning early I would say around 7 o'clock, she orders a taxi for us, and we get in this taxi, and go back to Berry Stoll's. Mrs. Speed asked me—I was downstairs in my bedroom—and she asked me to go up there and clean up Mrs. Stoll's room, as there were no women in the house. That was on Wednesday. So I went up to clean her bedroom, and see her, listen I went to see her, though, before I went up to clean, just as soon as I got back to the house,

she put her arms around me and kissed me, and this just shocked me to death, because she is sort of cold natured, and while cleaning her room, dusting, I raised a pillow up on a lounging chair, and I found a pile of money there, and it frightened me so I just dropped the pillow, and I don't know whether anybody knows I saw it or not, and when I got through I went back to bed. That just made a cold chill run over me when I saw that money. From then on, I didn't do anything, I was just up and down in bed most of the time, and then it was in this time that the doctor came to see me. After that I was just in bed most of the time. There never was anything said to me about the money. It wasn't fastened together, it was just sort of a nice bulk. It might have had a rubber band around it, I don't know. It was in currency. After I cleaned up the room, I went back to bed.

'We stayed at the Stolls then until Sunday morning. Then Stoll came down and told us he didn't need us any more, it was not told in my presence, but I heard it outside my room. I heard him tell Fowler simply that he wouldn't need us any more; that he was going to close up the place, and he didn't want to see it any more. He said he might open it up in the spring, and Fowler asked him if he would need him then, and he said he just didn't ever want to see the place again, he was going to close it up, but he didn't close the place up at all. I heard Fowler tell him that I was sick, I couldn't be moved, and he said, "The sooner the better." He didn't give any reason why he had to leave except he didn't want to see the place any more, Mrs. Stoll couldn't stand to see me. He said that we would all be better off.

'We just got ready and left, and before we left, Mrs. Woolet, Fowler's mother, Agnes Woolet, asked him for a written statement that "These children were free of all suspicions," and he said he would be glad to but he had to get permission from the authority or something before he could do it, and he never did do it. I told him that I would like to see Mrs. Stoll

before I left, and he came down and told me that I couldn't see her that she was resting and was not feeling well.' "

ASSIGNMENT OF ERROR NO. 27.

Error of the Court in ruling that any statements made by witness Ann Hobbs Woolet to Joseph M. Hayse and Nellie Stoess Hayse were statements made to an attorney while the relationship of attorney and client existed and were thus inadmissible (pp. 652 to 666 Tr. Evidence; and 1606 to 1614, Tr. Evidence) because witness Ann Woolet (p. 664 Tr. Evidence) testified that she had never consulted any attorney about the matter in question, and (on p. 1609 Tr. Evidence) she testified that she had not consulted Hayse as an attorney about anything, and that there had never existed between her and Joe Hayse the relationship of attorney and client; to all of which defendant objected and excepted, and made avowal.

ASSIGNMENT OF ERROR NO. 28.

Error of the Court in overruling objection to the testimony of witness Charles A. Appel, handwriting and questioned-documents expert, said objection being based on the ground that defendant had not been furnished any notice by the Government that it intended to make any comparison between genuine and questioned specimens, and based further on the fact that, as there is no federal statute in effect requiring the furnishing of such advance notice of the intention to compare specimens, the Kentucky Statutes, which require the giving of such advance notice, prevail, to which ruling of the Court the defendant objected and excepted, and still excepts. Said testimony of witness Appel being found on pp. 984 to 1019 Tr. Evidence; and said Court further erred in permitting the filing of Government Exhibits, including in witness Appel's testimony, Nos. 26, 27, 28, 33, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 59, 60, 62, 63, 64, 65, and 66, (p. 1019 Tr. Evidence), to which defen lant objected and excepted.

ASSIGNMENT OF ERROR No. 29.

With the testimony of witnesses John P. Knowles, Richard E. Smith, Charles A. Appel, and the exhibits to which their testimony included, properly excluded, as it should have been, there was no case to submit to the jury, and it was error for the Court to admit their testimony and the exhibits to which it referred, and it was error for the Court to overrule the defendant's motion for a directed verdict made at the conclusion of the Government's case and at the conclusion of all the evidence; to the overruling of which defendant excepted, and to the inclusion of such testimony and such exhibits the defendant objected and excepted.

ASSIGNMENT OF ERROR No. 29.

Error of the Court in allowing the Government to go further in contradicting or impeaching witness Alvin Kirtley than merely showing that he had previously made contradictory statements or that he had been convicted of a felony; and because the court erred in not confining the cross-examination of this witness to the main issue brought out on direct examination rather than permitting the Government to go far afield in its cross-examination; because such facts brought out upon the various and protracted cross-examination of said witness were irrelevant and incompetent, and such cross-examination swayed and prejudiced the jury against this defendant. (pp. 1248 to 1277; 1280 to 1282; 1326 to 1330, Tr. Evidence).

ASSIGNMENT OF ERROR No. 30.

Error of the Court in charging the jury that witness Alvin Kirtley had used first one name and then another in applying for a driver's license; and that his credibility had been attacked by the Government on the ground that Kirtley did not report the matter to the police or any enforcement officers, although the case was one of wide notoriety; because a witness' credibility may not be attacked

in such manner, and it was error to charge the jury in the maner indicated. (pp. 2080 and 2081, Tr. Evidence).

ASSIGNMENT OF ERROR No. 31.

The Government failed to establish by competent, relevant, or any, evidence that this defendant held Mrs. Stoll for ransom or reward; or that he transported her in interstate commerce while being so held; and it was error to overrule defendant's motion for a directed verdict made at the conclusion of the Government's case, to which defendant excepted.

ASSIGNMENT OF ERROR No. 32.

Error of Court in overruling defendant's objection to the testimony of F. B. I. Agent McKee and to the introduction of Government Exhibit No. 48, being letter and envelope addressed to "Custodian", because it was not established who wrote the letter, and the letter and envelope were admitted conditionally upon it being shown who wrote them (pp. 824 and 825 Tr. Evidence); because further, with the testimony of witnesses Knowles, Richard E. Smith and Charles A. Appel excluded, there was no evidence connecting this defendant as being the author of those documents.

ASSIGNMENT OF ERROR No. 33.

Error of the Court in overruling objection to the testimony of witness Laughlin, an F. B. I. agent, (p. 1052, Tr. Evidence), because said witness was permitted to testify conditionally and upon the promise that his testimony would be connected up by F. B. I. agent Bugas' testimony, and the basis of the objection was that witness Laughlin did not testify that certain entries made concerning the serial numbers of currency (ransom money) had been made in the usual and regular course of business. (see pp. 1021, 1022, 1023); to which the defendant excepted.

ASSIGNMENT OF ERROR No. 34.

Error of the Court in admitting incompetent evidence, brought out on cross-examination of this defendant, of the commission of prior offenses by this defendant, or the involvement of this defendant in some prior charges brought against this defendant by some women of Nashville, Tennessee, which said cross-examination had for its purpose the showing that this defendant had smeared, or threatened to smear other women who dared to accuse him of the commission of an offense, which such testimony was highly prejudicial and inadmissible, to which defendant excepted. (pp. 1204 to 1207, Tr. Evidence).

ASSIGNMENT OF ERROR No. 35.

Error of the Court in admitting in evidence letter dated July 1, 1936 (pp. 1237 and 1238) to W. A. Smith, Special Agent, F. B. I., because said letter was not voluntarily written; was written in consideration of a promise and inducement; was written while defendant was presumably insane; was written before any legal arraignment of this defendant, and was incompetent, involuntary, and inadmissible.

ASSIGNMENT OF ERROR No. 36.

Error of the Court in permitting lay witnesses Dick Atkinson (pp. 1401, 1402, 1403, 1404) and John Ward (p. 1766) and Dr. Long, dentist, (pp. 1772 and 1773) to express an opinion of whether or not this defendant knew right from wrong, to which ruling of the Court this defendant objected, and excepted; because such witnesses were incompetent to express such an opinion, and such testimony was inadmissible and prejudicial.

ASSIGNMENT OF ERROR No. 37.

Error of the District Attorney, Mr. Brown, in making, in his argument to the jury, highly prejudicial statements

about this defendant smearing other women and telling the jury as follows:

(page 2063, Tr. Evidence).

"We had this story. It was very clever. We had this story that was the pattern of every prior smear campaign he ever started. I didn't know until the time he took the witness-stand that that story would come out. I suspected it. On prior history, it was bound to come out. He had done it every time that he was charged with crime where he had no other recourse. The only time that he didn't use it was in the robberies of Mrs. Lamb and Mrs. Waggoner, and at that time he escaped into the defense of insanity. Now that was the only time he hadn't used this smear campaign."

Because such statements to the jury were calculated to inflame and prejudice them against this defendant, and did so; because such statements were not true, and because even though true related to prior offenses and involvements and were inadmissible in evidence and were unwarranted in argument.

ASSIGNMENT OF ERROR No. 38.

Because the Court erred in empaneling, swearing, and permitting C. E. Miller to be sworn, chosen, and to serve as an alternate juror (p. 305, pp. 310 to 313 and p. 342 and p. 1342, Tr. Evidence); and further erred in permitting said alternate juror C. E. Miller to take the place and serve instead of juror Mrs. Davidson and to participate in the consideration of this case and in the rendition of a verdict therein; because Section 417a of Title 28, United States Code Annotated, providing for the selection and use of alternate jurors, is unconstitutional null and void, and an invasion of this defendant's Constitutional right to a trial by a jury of twelve, no more and no less, as provided by the Sixth Amendment, and by Article II, Section 2, Clause 3 of the United States Constitution; and because when

juror Mrs. Davidson became ill and was unable to continue on as a juror and was excused by the Court from further service (p. 1342, Tr. Evidence) there remained no legally or constitutionally composed jury, and the substitution of alternate juror C. E. Miller for juror Mrs. Davidson violated this defendant's Constitutional rights, to the great prejudice of this defendant.

ASSIGNMENT OF ERROR NO. 39.

The Court erred in overruling defendant's challenge for cause of the following jurors:

Winthrop Allen. (pp. 45 and 47, 88 to 91 Tr. Evidence)
Jane Ballard..... (pp. 88 to 91 Tr. Evidence)
Elbert Geary Sutcliffe. (pp. 156 and 157 Tr. Evidence)
Wallace VanCleave... (pp. 156 and 157 Tr. Evidence)
Mrs. Martha Eastes.. (pp. 156 and 157 Tr. Evidence)

because said jurors were disqualified, for cause, from serving upon this defendant's jury by reason of social contacts, business, professional, personal and religious relationship with the chief prosecuting witness, Mrs. Alice Stoll, and with the members of the Stoll, Speed and Sackett families, and because of formulated opinions and of bias and prejudice against this defendant; and because the action of the Court in overruling said challenges for cause, caused this defendant to, and he did, exercise peremptory challenges for each of said jurors in striking them from said jury, and caused this defendant to utilize all of his 20 peremptory challenges and to accept other otherwise unacceptable jurors, all to the great prejudice of this defendant, to which ruling of the Court, the defendant excepted.

ASSIGNMENT OF ERROR No. 40.

Error of the Court in refusing to give to the ry the following instructions offered by the defendant, Thomas Henry Robinson, Jr.:

" 'REASONABLE DOUBT' is that frame of mind which forbids you to say, all the evidence considered and weighed, 'I have an abiding conviction of the defendant's guilt'. If you are in the frame of mind where, if it was a matter of importance to you in your own affairs, away from here, you would pause and hesitate before acting, then you have a reasonable doubt. A reasonable doubt exists where, after the entire comparison and consideration of all the evidence, the minds of the jurors are left in such a condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

"3. Witness Ann Hobbs Woolet was asked whether or not she had made certain statements previously to witnesses Joseph Hayse and Nellie Stoess Hayse, and witness Woolet stated that she had not consulted attorney Joseph Hayse and had not made statements asked of her in the foundation questions; witnesses Joseph Hayse and Nellie Stoess Hayse stated that witness Woolet had consulted witness attorney Hayse and that she had made certain statements to attorney Hayse and Nellie Stoess Hayse, which were reduced to writing on September 9, 1935, and then, when witness Woolet was confronted with such testimony and facts and when shown an affidavit said by said witnesses Hayse to contain witness Woolet's statements, witness Ann Hobbs Woolet then said she had signed the statement in question but did not remember giving the statements contained therein. If you believe that Ann Hobbs Woolet intentionally made a false statement, or falsely or intentionally stated in answer to the foundation questions that 'I don't remember', or 'I do not recall', or 'I don't know', or believe that witness Ann Woolet intentionally made a false statement with respect to any material fact, you may disregard all of her testimony.

"4. Testimony of Ann Hobbs Woolet should be received by the jury with caution and be carefully scrutinized.

"5. No crime under the indictment in question

could take place until Alice Speed Stoll was transported, taken, or carried away in interstate commerce after first having been held for ransom or reward, by defendant Thomas Henry Robinson, Jr.

"6. There must be evidence of substantial value that Alice Speed Stoll was held for ransom or reward and while so held was transported, taken or carried away in interstate commerce; and that she was not a child of Thomas Henry Robinson, Jr.

"If any of these elements are missing, the defendant, Thomas Henry Robinson, Jr., must be acquitted.

"7. The death penalty may not be recommended in this case, and may not be imposed, if, prior to the imposition of sentence upon defendant, Thomas Henry Robinson, Jr., Alice Speed Stoll was released unharmed, if you should believe that she was transported in interstate commerce after first having been held for ransom or reward by defendant, Thomas Henry Robinson, Jr.

"8. There being a total absence of evidence of the physical condition of Alice Speed Stoll at the time of the trial of defendant, Thomas Henry Robinson, Jr., and likewise a total and complete lack of any evidence of her physical condition and whether or not she is in a harmed or unharmed physical condition at the time of imposition of sentence (if there is to be an imposition of sentence) upon Thomas Henry Robinson, Jr., now the jury may not recommend any imposition of the death penalty in this case.

"9. If the facts as proven are as consistent with innocence, as they are of guilt, the defendant, Thomas Henry Robinson, Jr., must be acquitted.

"10. Defendant, Thomas Henry Robinson, Jr., cannot be found guilty, if the proven facts are consistent with innocence.

"11. The questions you are to decide are whether the defendant on trial is guilty, first, of unlawfully holding for ransom or reward Alice Speed Stoll, and secondly, of unlawfully transporting her in

interstate commerce while so held. If you are not satisfied that Alice Speed Stoll was so held for ransom or reward, or that she was transported in interstate commerce while being so held, you must acquit this defendant.

"12. If any of the elements set out in the foregoing charges 10 and 11 are missing, you must acquit the defendant.

"14. The indictment is no evidence, and you should not consider it as such. It is merely an accusation which the Government, the plaintiff, is required to prove in every detail, and the burden of proving every detail of the indictment is upon the Government.

"15. The defendant is not required to prove himself innocent or to produce evidence at all on the subject of his innocence. As a matter of strict logic, the jury should conclude from the fact that the defendant is presumed to be innocent and that the burden of proof is upon the Government that, he, himself, is not required to prove innocence or to produce evidence.

"16. You are instructed as a matter of law that the burden of proof is always upon the prosecution. It is not sufficient to establish a probability, though a strong one, arising from the doctrine of chance, that the fact charged is more likely to be true than the contrary, but the evidence must establish the truth of the fact beyond a reasonable doubt.

"17. The burden of proving each essential element of the offense is placed upon the prosecution, and until each essential element is established to your satisfaction beyond any reasonable doubt, you cannot return a verdict of guilty as indicted. You are instructed as a matter of law that before you would be justified in returning a verdict of guilty, you must find that the defendant committed not one, not some, but all and each and all of the acts charged against him as having by him been committed as charged in the indictment.

"18. If you believe beyond a reasonable doubt that the defendant is guilty of some of the acts charged in

the indictment, but you have a reasonable doubt as to whether he is guilty beyond a reasonable doubt of each and all of the acts charged in the indictment, you can not find him guilty of any of the acts so charged.

"19. Every material fact, whether direct or circumstantial, essential to the establishment of the guilt of the accused, must be proven to the satisfaction of the jury beyond all reasonable doubt.

"20. Insanity as a defense: The jury are instructed that if they believe from the evidence that at the time of committing the acts, or any of them, charged in the indictment, the defendant, Thomas Henry Robinson, Jr., was suffering from such a perverted and deranged condition of his mental and moral faculties as rendered him incapable of distinguishing between right and wrong, or unconscious at such times or time of the nature of the acts, or any of them, charged in the indictment while committing the same, or any of them; or where, though conscious of them, and able to distinguish between right and wrong and to know the acts were wrong, yet his will—that is to say, the governing power of his mind, was, otherwise than voluntarily, so completely destroyed that his actions, or any of them, were not subject to it, but were beyond his control; or, if you believe that at such time or times mentioned in the indictment, that said defendant was not able to understand or appreciate the nature or consequences of his acts, or any of them; or, if knowing and appreciating the nature and consequences of his acts, yet did not have or possess such will power to resist the impulse to do the acts, or any of them, mentioned in the indictment, it is your duty to acquit this defendant, and in such case your verdict shall be 'NOT GUILTY'."

"21. The defendant, Thomas Henry Robinson, Jr., was twice legally adjudicated insane, and had never been restored to sanity at the time of, or prior to, the indictment. The presumption of his insanity exists and the Government is under the burden to

prove that he was sane at the time of committing the acts charged in the indictment beyond a reasonable doubt. The burden is not upon this defendant to prove insanity and no presumption in this case exists that this defendant was sane at the time of the commission of the acts charged against this defendant in said indictment.

"22. The presumption does not exist, that although this defendant was twice adjudicated insane, or that he was adjudicated insane, that time has eradicated the presumption of insanity. That presumption is never eradicated, but must be proven by the Government beyond a reasonable doubt."

And by reason of said errors and other manifest errors and other errors appearing in the record herein, the defendant, Thomas Henry Robinson, Jr., prays that the judgment of conviction be set aside and that he be discharged of custody.

Dated February 8, 1944.

Robert E. Hogan,
Counsel for defendant,
Thomas Henry Robinson, Jr.

ORDER FILING ASSIGNMENT OF ERRORS.

On February 18, 1944, came the defendant Thomas Henry Robinson, Jr., and tendered in open court his Assignment of Errors herein which is hereby ordered to be filed and made a part of the record herein this 18 day of February, 1944.

Shackelford Miller, Jr.,
Judge, United States District Court for the Western District of Kentucky.

Eli H. Brown, III
Counsel for the United States of America.

Robert E. Hogan,
Counsel for Defendant,
Thomas Henry Robinson, Jr.

BILL OF EXCEPTIONS.

Be it remembered, that on September 28, 1943 the defendant Thomas Henry Robinson, Jr. was presented in open court, the United States Attorney being present in person, and thereupon, pursuant to the written request of the defendant, Robert E. Hogan, an attorney admitted to practice before all State and Federal courts in the Commonwealth of Kentucky, was appointed by the Court to represent the said defendant.

Thereafter, on September 30, 1943, in open court, certain proceedings were had;

Thereafter, on Wednesday, October 6, 1943, in open court, certain proceedings were had;

Thereafter, on October 13, 1943, in open court, certain proceedings were had, and all pending motions having been considered and passed upon and orders duly entered, the defendant Thomas Henry Robinson, Jr. was formally ar-

raigned, entered a plea of not guilty and the cause was assigned to trial before the Court and a jury on Monday, November 29, 1943.

Thereafter, on the 29th day of November, 1943, the above-entitled cause came on for trial at Louisville, Kentucky, pursuant to assignment, before the Honorable Shackelford, Miller, Jr., United States District Judge for the Western District of Kentucky, and a jury. On behalf of the United States there appeared Eli H. Brown, III, United States Attorney for the Western District of Kentucky, and J. D. Inman, Assistant United States Attorney for the Western District of Kentucky. On behalf of the defendant, who appeared in person, came his counsel, Robert E. Hogan, an attorney of Louisville, Kentucky.

Thereafter, to and including each day except Sunday, December 5, 1943, to and including Saturday, December 11, 1943, the cause was tried before the Court and jury. On December 11, 1943, the jury returned a verdict of guilty, recommending the imposition of the death penalty, and thereupon by agreement the cause was passed to Monday, December 13, 1943, and it was ordered that the defendant Thomas Henry Robinson, Jr., be presented for sentence.

Throughout the period mentioned above, to-wit, September 28, 1943 to and including December 13, 1943 and on the specific dates mentioned all of said proceedings were stenographically reported by the official court reporter. All evidence heard, all motions made, all rulings thereon, all objections and exceptions to the reception of evidence or to the refusal to permit evidence to be introduced, all avowals and exhibits are incorporated and embodied in the court stenographer's "Transcript of court proceedings had before the trial of Thomas Henry Robinson, Jr.," "Transcript of court proceedings had during the trial of Thomas Henry Robinson, Jr." and "Transcript of court proceedings had on December 13, 1943 pertaining to the sentencing of Thomas Henry Robinson, Jr." and the same are made a part of the Bill of Exceptions by incorporating the same herein by reference and are copied herein in full. Said proceedings in their entirety are as follows:

1* UNITED STATES DISTRICT COURT

Western District of Kentucky
At Louisville

United States of America, - - - - - Plaintiff,

v.

Thomas Henry Robinson Jr., - - - Defendant.

TRANSCRIPT OF COURT PROCEEDINGS HAD BEFORE THE TRIAL OF THOMAS HENRY ROBINSON, JR.

Louisville, Kentucky,
September 28, 1943.

Before Honorable Shackelford Miller, Jr., United States District Judge for the Western District of Kentucky, at Louisville.

Appearances:

Eli H. Brown, III, United States Attorney, for the government.

J. D. Inman, Assistant United States Attorney, for the government.

Thomas Henry Robinson, Jr., the defendant.

2 PROCEEDINGS

The Court: Have you got a matter against Thomas Henry Robinson, Jr.?

Mr. Brown: Yes, Your Honor.

The Court: Is your name Thomas Henry Robinson, Jr.?

Mr. Robinson: Yes, sir.

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*Inset numbers appearing at outer edge of text indicate page numbers of original Transcript of Court Proceedings.

The Court: Mr. Robinson, the Grand Jury of this court returned an indictment against you on the 20th of October, 1934. The court has ruled that you are entitled to plead to that indictment and to have a trial on the charges which the indictment contains.

I have been forwarded by your mother—is this Mrs. Robinson?

Mrs. Robinson: Yes.

The Court (Continuing): From Nashville certain papers, one dealing with an affidavit for you to sign. It is styled affidavit in forma pauperis, which asks leave, if you execute it, to proceed in forma pauperis in this case. Also, another application for your signature for the appointment of two counsel to represent you. And also another pleading, which has not been signed but which is styled plea in abatement. Do I understand from these that you do not have funds with which to secure an attorney of your own choosing and selection?

Mr. Robinson: That's right.

3 The Court: And that you want two attorneys to represent you in this case?

Mr. Robinson: Yes, sir.

The Court: The Court will appoint Mr. Robert Hogan and Mr. Paul Keith.

Mr. Robinson: Your Honor, if I may say, Mr. Hogan represented me previously in this case, and there was a little disagreement among counsel at that time, and I would like to ask that someone else be appointed.

The Court: How do you mean "disagreement"?

Mr. Robinson: Mr. Hogan was connected with the firm when my appeal for a new trial was overruled in this court, and I understood there was quite a bit of disagreement between counsel at that time.

The Court: Between him and other counsel?

Mr. Robinson: No, between him and his associates on my motion for a new trial, and I don't think Mr. Hogan would want to serve if he knew how I feel about that.

The Court: Well suppose I give you an opportunity to talk to Mr. Hogan. Suppose you and Mr. Hogan talk it over, and then after that, if you come to the conclusion

that it would be better to appoint someone else for you, I will be glad to do it. I think probably you had better talk to him and see what the situation is.

Mr. Robinson: All right, I will be glad to do that.

4 The Court: All right. I will be here and when you all reach a decision in that matter you may let me know and if that appointment is not to be made, we will make another.

Mr. Robinson: Is Mr. Hogan present?

The Court: I think Mr. Hogan is here. Mr. Hogan.

Mr. Hogan: Yes.

The Court: You may interview Mr. Robinson, Mr. Hogan, and the Court will take it up with you later.

Mr. Robinson: Thank you, Your Honor.

The Court: We will have a short recess.

After a short recess the following proceedings were had:

The Court: Did you have a talk, Robinson, with Mr. Hogan?

Mr. Robinson: Yes, sir. Mr. Hogan and I have reached an agreement and I think I would like to have him as counsel in this case.

The Court: You think you would like to have him?

Mr. Robinson: Yes. I want to explain that. Before, a disagreement had formerly arisen between Mr. Huggins who was associated with him at that time and Mr. Hogan. I did not know Mr. Hogan personally. Every-

5 thing is quite satisfactory and I would be glad to have him as my counsel.

The Court: And Mrs. Robinson has talked about it too? Is it satisfactory to you?

Mrs. Robinson: Yes.

The Court: All right. The appointment will stand. I understand you want the appointment to stand?

Mr. Robinson: Yes, Your Honor.

Mr. Hogan: If Your Honor please, the occasion may arise where we might need the assistance of some out of town counsel. I would like to reserve the privilege of asking the Court to permit me, if that occasion does arise, to have the assistance of counsel, say, from Nashville or the State of Tennessee.

The Court: I don't know that the Court can appoint out of town counsel. There is no provision for the payment of compensation of out of town counsel. I have no objection, of course, to you and your associate attorney making any arrangements for assistance if you and your client arrange it.

Mr. Hogan: I am not asking the Court to appoint one —I am just asking the privilege of having an associate in the case if the occasion arises or it is deemed advisable to have other counsel.

6 The Court: If the defendant wants that, he can avail himself of that privilege.

Mr. Brown: Your Honor, I think we should set an arraignment date, too, at this time so he can be arraigned.

The Court: Mr. Hogan, I will hand you these papers which Mrs. Robinson forwarded to me which have been prepared apparently by Montague S. Ross, an attorney of Nashville, Tennessee, as they came in an envelope with his return address on it.

Now, they have not been signed or anything, and you can go over them and you and Robinson can determine what you want to do with them, and here are the copies that came along. Whether you decide to file a plea in abatement or not, either in that form or some other form, is for you and your co-counsel to decide upon.

I would suggest, unless you have some reason to the contrary, that we set the arraignment for tomorrow at ten o'clock.

Mr. Hogan: I think that will be satisfactory. That is a little bit close up but I think we can have our pleas ready by that time.

The Court: Now if that is too close for you, we will set it for day after tomorrow at ten o'clock.

Mr. Hogan: Suppose we set it for day after to-
7 morrow, Thursday.

The Court: All right, Thursday morning, at 10 o'clock.

Mr. Brown: The bond was originally fixed at $50,000, and I think there should be the same bond.

The Court: Was there bail in the case?

Mr. Brown: It is within the discretion of the Court.

The Court: Well if there is any application for bail, the Court will fix the amount. I don't know whether the defendant is going to apply for it or not.

Mr. Hogan: We will reserve the right to make that application.

The Court: Yes. I will ask the Clerk to notify Mr. Paul Keith of his appointment as associated with you, Mr. Hogan, as counsel for the defendant, then the matter will be adjourned, until Thursday morning at ten o'clock.

The court convened pursuant to adjournment, on Thursday morning at 10 o'clock, September 30, 1943, and the following proceedings were had:

The Court: Mr. Hogan, are you ready in the Robinson case?

Mr. Hogan: Yes. If Your Honor please, in the matter of United States of America v. Thomas Henry
8 Robinson, Jr., I desire to file with the Court—

The Court (Interrupting): I think before you make any pleadings, probably we should read the indictment.

Mr. Hogan: All right, Your Honor.

The Court: Robinson, in reading the opinion of Judge Roche of the California Court, which heard your writ of habeas corpus, I see from that that sometime prior to 1934, there was some proceeding with regard to your sanity, in Tennessee, and I believe there was an adjudication, was there not?

Mr. Robinson: Yes, sir.

The Court: Is there any contention made now that you are in any way mentally unsound and mentally incompetent at the present time?

Mr. Robinson: No, sir. I feel, and I think my family and friends feel, that I am perfectly competent and sane.

The Court: Is there any contention by your attorneys that you are mentally incompetent or mentally unsound at the present time?

Mr. Hogan: There is no contention at this time that he is insane or oherwise mentally incompetent.

I might say to the Court that there probably will be,

there will be, a plea that at the time and before the time of the alleged commission of the acts charged in
9 the indictment that the defendant Thomas Henry Robinson, Jr. was insane and not mentally capable of knowing what he was doing or understanding the nature or purport or the result of any act that he might have been alleged to have done in connection with these matters set up in the indictment.

The Court: Well I understand that, in connection with the charge, but there seems to be some law, as outlined by Judge Roche, that no plea should be taken if the man or the defendant alleges or claims in any way any mental incompetency, and I just wanted to be sure there was no claim at the present time.

Mr. Hogan: As the defendant himself has stated and as I want to state now as one of his counsel that there is no such plea that he is now insane or mentally incompetent.

The Court: All right. Now, Robinson, in this action which is number 18917, in the United States District Court for the Western District of Kentucky, Louisville Division—

Mr. Brown (Interrupting): I think the first count has been nolled.

The Court: I will read the indictment insofar as it pertains to the present charge:

"In the District Court of the United States for the Sixth Judicial Circuit and Western District of Ken-
10 tucky, held at Louisville, October Term, in the year of our Lord 1934, First Count—"

That count was against Thomas Henry Robinson, Jr., Mrs. Frances Robinson, and Thomas Henry Robinson, Sr. and was nolled by the District Attorney, as I understand.

Mr. Brown: I believe the jury found Mrs. Frances Robinson and Thomas Henry Robinson, Sr. not guilty, and Judge Hamilton dismissed it as to Thomas Henry Robinson, Jr.

The Court: The first count is no longer in the case. (Reading):

"Second Count:

"And the Grand Jurors aforesaid upon their oaths aforesaid do further present:

"That heretofore, to-wit, on or about the 10th day of October, in the year of Our Lord, 1934, in Jefferson County, Kentucky, in said district and within the jurisdiction of this court, Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., late of said district, unlawfully did then and there knowingly transport and cause to be transported and aid and abet each other in transporting in interstate commerce, a person who had been unlawfully seized, kidnaped, abducted and carried away and held for ransom, and said person was not a minor and had not been seized and carried away by her parents,
11 and did not liberate said person unharmed; that is to say, at said time and place the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr. unlawfully did then and there transport and cause to be transported and aid and abet each other in transporting in interstate commerce, to-wit, in commerce from Louisville, in the State of Kentucky to Indianapolis, in the State of Indiana, Mrs. Alice Stoll, not a minor and not transported by her parents, who had been unlawfully seized, kidnaped, abducted and carried away from her home by the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., and held the said Mrs. Alice Stoll for ransom or reward, and the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson, and Thomas Henry Robinson, Sr. did then and there, while the said Mrs. Alice Stoll was in their custody, beat, injure, bruise and harm and aided and abetted each other in beating, injuring, bruising and harming the said Mrs. Alice Stoll, and did not liberate her unharmed.

"Against the peace and dignity of the United States and contrary to the form of the Statute in such case made and provided."

12 This indictment was filed in open court the 20th day of October 1934.

Now, Mr. Hogan, have you some pleas that you wish to make?

Mr. Hogan: Yes. On behalf of the defendant, I present to the Court application for appointment of counsel and for leave to proceed in forma pauperis and an affidavit in support of that application.

And also, on behalf of this defendant I desire to file a plea in abatement. There are several matters set up in the plea in abatement which the Court may or may not desire to inquire about at this time.

The Court: Have you furnished the District Attorney with a copy of these pleadings?

Mr. Hogan: I have, Your Honor.

Mr. Brown: At this point I would like to state that I have received copy of the plea in abatement. I do not believe that I have received a copy of the other papers.

Mr. Hogan: I thought I had those other pleas with me but I don't, but I have them in my office and I will furnish them to Mr. Brown.

Mr. Brown: That is quite sufficient.

The Court: Do you want to be heard on this plea, Mr. Hogan?

13 Mr. Hogan: If Your Honor please, we do want to be heard, but we would like and rather insist upon this request that the hearing on that plea in abatement be passed to some other time than today.

I might say that I have been busily engaged in reviewing the record in this case, which this Court itself knows is quite lengthy. There have been a lot of proceedings held in this court and in the courts of California, and in the Circuit Court of Appeals and I think in the Supreme Court of the United States; and counsel has been pressed for time. Also, considerable time has been taken up in interviewing the defendant and for that reason we rather insist upon a hearing on this plea at some other time.

The Court: What time do you want?

Mr. Hogan: Would it inconvenience the Court to say some time about the middle of next week?

The Court: I think that is satisfactory with me.

Mr. Brown: That is quite all right with me.

The Court: Next Wednesday?

Mr. Hogan: That is all right, if Your Honor please.

The Court: Wednesday, October 6th, at 10 o'clock. I suggest that it would probably expedite the matter if
14 counsel for both sides would furnish the other side with the authorities that they expect to rely upon.

Mr. Hogan: That was one of the reasons for delay, to get a memorandum brief that we might exchange.

The Court: If both of the attorneys will furnish me with a list of the authorities which they expect to rely upon and give opposing counsel copy of it, we will all be familiar with the cases that are being discussed.

Mr. Brown: Yes. If you will let me have them by Saturday or not later than Monday—I imagine you have most of them.

The Court: Now do you wish to delay the plea until a later time, or do you wish to plead now?

Mr. Hogan: We wish to delay a plea on the indictment until a later time.

The Court: Until after the plea in abatement has been ruled upon

Mr. Hogan: I think that is the proper procedure because if the plea in abatement should be sustained there would be no necessity, as I understand it, for making a plea of guilty or not guilty to the indictment.

The Court: All right.

Mr. Keith: There has also been filed a motion for the appointment of counsel which I understand the filing of it today is probably the official filing of it—that the appointment that was made the other day was before those
15 were officially filed.

The Court: That is right. The defendant told me in court that he wished me to appoint counsel at that time.

Mr. Keith: If Your Honor please, I would like to withdraw from the case if I could. I have talked to Mr. Hogan and I understand he has talked with Mr. Robinson about it, and it is all right with them.

The Court: The statute, I believe, requires that the

Court appoint not more than two counsel if the defendant desires two counsel. This application asks for two counsel and if the defendant still wants two counsel, I don't believe I would be permitted to let you withdraw. If he only wants one counsel now—

Mr. Hogan (Interrupting): I suggest that that matter be left entirely to the defendant.

Mr. Robinson: I would be willing to proceed with one counsel until such a time—unless we should find that other counsel would be needed in the case.

The Court: Then, as I understand it, your request then for two counsel would be modified to the extent that you will only want the Court to appoint one counsel for you, and that is Mr. Hogan who has already been appointed.

Mr. Robinson: Yes.

The Court: And Mr. Keith can withdraw from the
16 case with the defendant's approval.

Mr. Robinson: Yes, sir.

The Court: All right, Mr. Keith, your appointment can be withdrawn and Mr. Hogan will be the counsel appointed for the defendant in this case. If there is any change, the Court will have to be advised of it by defendant or his counsel.

Mr. Hogan: We will notify the Court of any change.

The Court: Then the matter will be continued over until next Wednesday at 10 o'clock, at which time we will hear the arguments on the plea in abatement.

The defendant is in the custody of the Marshal.

Met pursuant to adjournment at 10 o'clock Wednesday October 6, 1943, and the following proceedings were had:

The Court: Mr. Hogan, you have filed a plea in abatement on behalf of the defendant Robinson in this matter, No. 18917, which is set for hearing this morning. Are you ready?

Mr. Hogan: Yes, Your Honor. Before I take up the argument in that matter, however, I would like to file on behalf of the defendant a motion by the defendant in per-

son and by counsel for an order permitting and allow-
17 ing the defendant to inquire into the proceedings and evidence introduced before the Grand Jury which returned the indictment in this case on October 20, 1934, the purpose of that being to establish whether or not any witness whatsoever testified whether or not Mrs. Alice Stoll was liberated unharmed at the time set out in the indictment, and to permit this defendant to inspect the minutes of the Grand Jury, and to procure testimony and affidavits of Grand Jurors and witnesses who testified before that body as to whether or not any person whatsoever testified as to whether or not she had been liberated unharmed at the time set out in the indictment and as charged in the indictment. And, further, to permit this defendant to use such evidence, information and affidavits thus obtained in support of his plea in abatement.

In addition to that I desire to file on behalf of the defendant a motion for a rule to require the United States of America, the plaintiff, to show cause if any it has or can why it should not be compelled to reply to this plea in abatement filed by the defendant in this action.

Now, in support also of the plea in abatement, I desire to file my own affidavit as to admissions made to me on Thursday, September 30, 1943, by Mr. Claude Hudgins who was then Assistant United States District Attorney
and who volunteered to me the information that he
18 conducted all of the hearings before that body and that nobody testified as to Mrs. Stoll's condition at the time she was released. In other words, that there was no testimony whatsoever introduced before the Grand Jury as to whether or not she was harmed or unharmed at the time she was allegedly liberated.

The Court: You have seen these pleadings filed by the United States, have you—on October 5th?

Mr. Hogan: Mr. Brown furnished me with a copy of those affidavits, I believe.

The Court: Well, one is a motion to strike the plea in abatement supported by four affidavits, A, B, C and D.

Mr. Hogan: Yes, I have been furnished with those, Your Honor.

Mr. Brown: Now if I could be furnished, Your Honor, with copies of all motions filed, and I understood Mr. Hogan was going to furnish me with copies of the memorandum not later than Monday on this motion for plea in abatement. Of course I understand that Mr. Hogan is busy but I took time to furnish him not only copies of everything I intended to file prior to the hearing, with copies of the authorities I intended to rely on. I have just been handed this morning some memorandum of decisions to be relied on consisting of six cases. Three of those cases I have read and three of them I haven't read.

I feel that we will proceed in a much more
19 orderly fashion if I could have even twelve hours prior to the hearing to read some of the authorities that Mr. Hogan is going to present. I don't think that I am unreasonable in that request.

Mr. Hogan: The defendant is perfectly willing—

Mr. Brown (Interrupting): You might be willing, but you said you would do it before and you didn't do it until this morning.

Mr. Hogan: I might say that prosecuting is routine business for the prosecuting attorney but it is a special business of mine, and—

Mr. Brown (Interrupting): This case isn't routine business by any manner or means.

The Court: I think we understood last week when the motion for plea in abatement was made that counsel for both sides would furnish us with a memorandum of authorities, and also furnish the Court with that. Probably Mr. Hogan has been a little rushed in getting up his memorandum of authorities; however, I suggest that in the future we try to follow that provision.

Mr. Hogan: I know, and I will say to the Court, frankly, that Mr. Brown did mention furnishing them by Monday but it was just not humanly possible for me to do that by Monday.

The Court: All right. Now, Mr. Hogan, your
20 plea in abatement and your motion really present the same question, don't they? And that is your right to review the proceedings before the Grand Jury?

Mr. Hogan: I think so, Your Honor.

The Court: Was there any written transcript of the proceedings before the Grand Jury in this case?

Mr. Brown: I am informed there was not.

The Court: How are you going to review them, Mr. Hogan, if there wasn't any transcript taken? Do you think there was a transcript taken?

Mr. Hogan: I don't know. You see we haven't any way of knowing—

The Court (Interrupting): Well we have the statement that there was not and unless we get some statement to the contrary I don't know how we can find any transcript of the testimony.

Mr. Hogan: I might say to Your Honor that I had no way of knowing whether there was or wasn't. The minutes —I might say that I tried to find out and the minutes were not in the Clerk's Office, and I understood that if there were any minutes they were in the possession of the District Attorney.

The Court: Well the District Attorney now says there was no transcript of the evidence taken, as I gather
21 from Mr. Brown—

Mr. Brown (Interrupting): Yes, Your Honor. And it has been uniformly the practice in this District, long before I came here, never to take any written testimony before the Grand Jury except in very exceptional cases involving a very extended investigation. Now the records in my office—of course I wasn't here when the Grand Jury was convened in this case, but my records disclose only the list of witnesses that appeared before the Grand Jury, and they do not disclose that there was ever any written transcript of any evidence, nor that there was one. I have been informed by persons who testified before the Grand Jury that no reporter was there. Only Mr. Hudgins was present, and the witnesses as they were called. That is the extent of my knowledge on that.

The Court: What is it that you wanted to review, Mr. Hogan?

Mr. Hogan: Your Honor, the reason I want—I want permission to determine or to take the depositions or have

the witnesses or the Grand Jurors themselves in Court to determine from them—they were there and they heard the evidence—to determine from them themselves whether or not any competent evidence was given to them—competent evidence, not hearsay evidence—on the question of the physical cnodition of Mrs. Stoll at the time it is
22 claimed in the indictment she was released.

The Court: Well aren't those witnesses available to both sides? If they are around here you can talk to them. I am here today for a hearing as to what happened. I am not here to get the witnesses here. It is your duty to get the witnesses, and Mr. Brown's duty to get the witnesses. If you want the witnesses, subpoena them here.

Mr. Hogan: Now that is exactly the thing. If the Court will give us permission—

The Court: I am not going to give you permission yet to talk to the Grand Jury. That is another matter. But so far as the witnesses are concerned, if you show me with any degree of conviction that there is any basis to your contention, I am willing to hear the witnesses. What is the basis of your contention? Have you any affidavits now to support it? Now you have seen the affidavits filed in support of the government's motion to—

Mr. Hogan (Interrupting): I have seen that, those affidavits. Now the Assistant—the then Assistant District Attorney has admitted to me that there was no such evidence. Now I understand he has made an affidavit to the contrary. My affidavit counter to his makes an issue of fact upon that subject.

The Court: Have you an affidavit from Mr. Hudgins?

23 Mr. Hogan: The District Attorney has.

The Court: Well, I thought you said your affidavit to the contrary makes an issue of fact.

Mr. Hogan: My own affidavit, countering his affidavit, makes an issue of fact—

The Court: Well, why don't we get Mr. Hudgins here and see what he has to say? Isn't that a very good idea, Mr. Hogan?

Mr. Brown: I certainly have no objection.

Mr. Hogan: Let's not restrict it to Mr. Hudgins only—

Mr. Brown (Interrupting): Now I certainly am going to object to dragoon out of witnesses in advance of the trial the evidence that the government expects to introduce.

The Court: Well, as I gather, the only statement that Mr. Hogan is going on now is some statement which Mr. Hudgins made to him. Now you have an affidavit from Mr. Hudgins—

Mr. Brown (Interrupting): Yes, given Monday.

The Court (Continuing): Given Monday. And if there is any conflict between what Mr. Hudgins stated in his affidavit to you and the statements he is alleged to have made to Mr. Hogan, we had might as well straighten those out.

24 Mr. Brown: I certainly have no objection.

Mr. Hogan: Well, if Your Honor please, I think it goes a little bit farther than that. I would like the privilege of bringing the witnesses who testified before that Grand Jury and see what they themselves have to say. Now, if Your Honor please, that clause or phrase embodied in the indictment that she was not liberated unharmed means the difference between a death penalty and a penalty upon conviction of some lesser sentence.

The Court: Of course, the case is not being tried at this time. The jury would have to receive that evidence.

Mr. Brown: Certainly.

Mr. Hogan: But the cases hold, if Your Honor please, that if there wasn't any evidence to justify that charge being embodied in the indictment, then it should not be the prerogative of a petit jury to gamble upon a man's life by making it possible for them to give him a death sentence if they otherwise found him guilty, because—

The Court (Interrupting): Now, let me interrupt you right there. I am not trying at this time to determine whether or not the evidence would warrant the return of such a verdict. I am not trying to find out what all the evidence before the Grand Jury was. As I understand the rule it would be merely, "Was there any evidence be-

25 fore the Grand Jury which would warrant this allegation in the indictment that she was not returned un-

harmed." Is that correct?

Mr. Hogan: That is what we are contending, Your Honor.

The Court: Now I am not trying to find out how much evidence was to that effect, or how much evidence was against that effect.

Mr. Hogan: Well, any evidence. Was there any evidence?

The Court: Or any evidence. Now I am supported with the affidavits this morning, I am supplied with the affidavits this morning of Mrs. Stoll which has been filed in evidence. If that affidavit is correct, I don't have to go any further do I?

Mr. Hogan: If that affidavit is correct, I would say that that would be a scintilla, but--

The Court (Interrupting): Well that's all I need, isn't it?

Mr. Hogan: But I—

The Court (Interrupting): Isn't that all I need? A scintilla?

Mr. Hogan: No. The defendant has the right to cross-examine that witness or any other witness who might have appeared because at the most a Grand Jury hear-
26 ing is an ex parte proceeding.

The Court: That's correct.

Mr. Hogan: The defendant is not ordinarily or usually there. The witnesses are paraded before that body and I may say that very often is the case that the rules of evidence are flaunted aside and hearsay evidence is admissible, and that is all right in a minor case, but here we have a life case--a man's life is at stake. Therefore, under the weight of the authorities that I have, when a showing is made that there wasn't any evidence—not some competent and some incompetent, but when there was not any evidence whatsoever as a basis for that charge, the Court should permit an inquiry into the witnesses who came before that Grand Jury; and not only the witnesses but the Court should review the testimony of the Grand Jurors.

The Court: What is your weight of authority?

Mr. Brown: I certainly do not subscribe to such a

theory.

Mr. Hogan: Well one of the cases—I take it that the Court will indulge me a little bit on that.

The Court: I will spend some time but I am not going to spend all day on it.

Mr. Hogan: I am not going to ask you to. I will read from two cases and refer and comment on other cases.

27 The Court: I notice you have referred in your memorandum to McKinney v. United States, 199 Federal. Isn't that against you?

Mr. Hogan: The general principle is against me, but in the opinion itself it says where there is an infamous crime or some special circumstance, the Court should permit that inquiry, but I am relying chiefly upon the statements made by Judge Sanborn in that case, wherein he points out much better than I would be able to, or any other lawyer, wherein the majority opinion in that case is wrong, and I think the reasoning of Judge Sanborn in that case is plausible whereas—

The Court (Interrupting): Do you expect me to follow a dissenting opinion in a case rather than a majority opinion?

Mr. Hogan: I expect this Court to recognize that probably in some majority opinions that majority opinion might be wrong. It was wrong in the defendant's case in the Circuit Court of Appeals for the Northern District of California. It was wrong in the District Court out there and they had to take it back. So I certainly do feel that this Court can be shown that the majority opinion, not only in the McKinney case, but in some other cases, turned out to be wrong and the dissenting opinion may have as much weight as probably the majority opinion.

28 The Court: All right, go ahead.

Mr. Hogan: In the case of Brady v. United States, which was from the Eastern District of Kansas, James E. Brady and others were convicted of using the mails to defraud and of conspiracy to so use them. "James Brady and Arthur Baxter, together with other persons, were charged with by indictment of violations of Sections 215 and 37 of the penal code. The indictment contained 66

counts. The first 65 counts charged a violation of Section 215, and the 66th count charged a violation of Section 37 of the penal code. Brady and Baxter were tried jointly. Brady was found guilty on counts 1 to 38 inclusive, counts 41 and 42, counts 44 to 52, inclusive, and counts 54 to 66, inclusive. * * * Brady was sentenced to the penitentiary as follows: On the first count, five years * * *." The rest of that is not important.

(Continuing): "The conspiracy count, after alleging the conspiracy, set up as overt acts the use of the mails in the execution of the scheme to defraud alleged in counts 1 to 65, inclusive.

"Brady and Baxter filed a motion to quash the indictment, setting up, among other grounds, that there was no competent evidence before the grand jury of the offenses charged." Now that is what our contention here is.

29 "On the hearing of the motion to quash, counsel for defendants Brady and Baxter undertook to prove that there was no evidence whatever before the grand jury showing that the defendants used the mails in executing or attempting to execute the scheme to defraud. At the hearing the following occurred:

"The Court: Well, the court has already ruled, but for the sake of the present record will repeat his ruling, that upon this inquiry the only matters concerning which the court will hear testimony, or the only allegations concerning which he will hear testimony, are that no testimony of any kind was offered to the grand jury, or that the only witnesses who testified before the grand jury were not in law competent witnesses.

"Mr. Krauthoff: We desire to note an exception to the ruling of the court and to inquire for our own guidance whether the court intimates that we cannot prove that there was no evidence as to some material link in the chain of evidence necessary to sustain the indictment.

"The Court: Yes; that is a very clear inquiry, and my answer will be equally clear. I think you cannot offer testimony to show that as to some particular link there was no testimony before the grand jury. That is my view of the law, and I think that view is shared by the

30 better considered decisions of the appellate court.

"Mr. Krauthoff: You mean we would not be permitted to prove that there was no proof that the letters were mailed?

"The Court: I do mean that, Mr. Krauthoff.

"Mr. Krauthoff: Or there was no proof that they were signed by the parties against whom they were offered?

"The Court: When I answered your general question, I ertainly answered your specific question.

"Mr. Krauthoff: We note exceptions to the rulings of the court. * * *

"Mr. Krauthoff: And now, to make our record clear, we offer to prove by the witness on the stand and by others we have here, that there was no evidence offered before the grand jury that the letters had been mailed, nor that they were written by any of the parties to the suit.

"The Court: You object to the offer, Mr. Skinner?

"Mr. Skinner: We object to the offer as not within the scope of the inquiry which is now being conducted, nor within the scope of the court to hear, and determine, and pass upon.

"The Court: The objection is sustained.

31 "Mr. Krauthoff: To which we except."

"The gist of the offense under Section 215, upon which counts 1 to 65 are based, is the use of the mails in executing or attempting to execute the scheme to defraud, and not the scheme itself.

"In Mounday v. United States, 225 Fed. 965, the court said:

"'It has been the uniform holding of the courts that the gist of the offense is the use of the post office in the execution of the scheme to defraud and not the scheme itself."

Then it talks about what the crime of conspiracy consists of. (Reading):

"From the foregoing, it appears that the defendants were denied the right to show in support of their motion to quash that there was no evidence whatever before the grand jury of the acts and things which constituted the gist of the offenses charged in counts 1 to 65, inclusive, and

of the overt acts charged in count 66.

"The authorities are not in harmony on the question here presented. In 31 Corpus Juris, page 808, Section 385, it is said:

"'It is generally held that an indictment will not be quashed or set aside on the ground of insufficiency of evidence where it appears that some witnesses were ex-
32 amined by the grand jury, or that the grand jury had before it some documentary evidence, unless the evidence before the grand jury appears to have been palpably insufficient. Indeed in some decisions the rule is announced that the courts can make no inquiry whatever into the sufficiency of the evidence passed upon by the grand jury. According to others, however, where it is made to appear by competent testimony that the indictment is unsupported by any evidence whatever, or is supported only by evidence clearly incompetent and which would not be admissible at the trial, or when there is wanting an essential link in the proof of the charge, it will be quashed, dismissed, or set aside on motion.'

"It is the settled law of this circuit, we think, that an indictment will be quashed where there was either no evidence whatever, or no competent evidence of the offense charged, presented to the grand jury." Citing Nanfito v. United States, 20 Fed. (2d) 376, and other cases upon which I rely, and the McKinney case is also cited, and the Murdich case, and the Anderson case.

"We think the same rule should be applied where a grand jury returns an indictment without any evidence whatever before it of a separate, distinct and essential element of the offense, such as the use of the mails under Section 215, and the overt act or acts under Section
33 37." Citing People v. Price and others.

In People v. Price the court said:

"'The question presented for our decision is whether a grand jury can find an indictment without full proof of the crime, or where an essential link in the proof is missing.

"'The Penal Code provides that a person who, after having been convicted under the laws of any other state of a crime which, if committed within this state, would

be a felony, commits any crime within this state, is, on conviction, subject to additional imprisonment. In the case at bar the imprisonment would be double. The rules of criminal pleading require that the prior conviction be alleged in the indictment to be of any avail, as it is a substantial and component part of the crime.

"'In the Harrington case the court held that the legislature cannot dispense with these allegations. The indictment is required to set forth the former conviction, and to aver that the defendant was the former convict.

"'On the trial of such an indictment there must be proof of the identity of the defendant as the defendant in the prior conviction.

"'The grand jury found the pending indictment without any testimony connecting the defendant with the
34 Georgia conviction. In doing so they violated the well-settled rules of law. The doctrine that a grand jury may indict without evidence, if tolerated, would establish a precedent subversive of the liberty of the citizen and his safety and security, and the good name and fame of any innocent person might at any time be blasted.'

"We conclude that the court erred in overruling the offer of proof above set out."

Now—

The Court (Interrupting): Now Mr. Hogan, I don't believe we are going to find much disagreement as to what the law is on that.

Mr. Brown: I will agree with that—certainly.

The Court: Certainly if there was no evidence at all before the grand jury, the indictment ought to be quashed. The question we have before us is the procedure, isn't it, to determine that question? Are we supposed to, on a motion of yours, sit down here and hear all of the witnesses who appeared in this case? In other words, to try this case now and then try it over again a second time?

Mr. Hogan: No, sir.

The Court: Well don't you have to make a showing before you are entitled to have the proceedings before the grand jury reveiwed by this court?

Mr. Hogan: And we have made that showing.

35 The Court: Where is your showing? That is what I want to find out?

Mr. Hogan: The plea in abatement by the defendant charges that—

By the Court (Interrupting): Well, you can charge anything in the world in your plea but I want some affidavits to back it up. That is what I mean by a showing.

Mr. Hogan: His own plea in abatement is verified, Your Honor, which says—

By the Court: "On information and belief," that doesn't prove anything.

Mr. Hogan: No; he says, if Your Honor please, "of his own knowledge he knows that the prosecuting witness, Mrs. Alice Stoll was not harmed or in a harmed condition at the time she was claimed to have been liberated."

The Court: And I have the affidavit here of Mrs. Stoll which is exactly to the contrary.

Mr. Hogan: That is correct. And that, Your Honor, makes an issue of fact which should open the door to bring in the grand jurors themselves—

The Court (Interrupting): Now Mrs. Stoll says she testified to that fact before the grand jury. It doesn't make any difference how much he would testify to the contrary, that would be sufficient to support the indictment, wouldn't it?

36 Mr. Hogan: It would, unless we had a chance to cross-examine her and see and bring out, not only the bare naked—you can't try this issue on a motion to quash or plea in abatement on mere affidavits because you should have the right to make inquiry and cross-examine that person or persons.

The Court: Well now I will give you any opportunity you wish to present any affidavits you want to in the record. You have made some statements about Mr. Hudgins. His affidavit is already in the record, filed by the government. If you want to file an additional affidavit for Mr. Hudgins which would support which you think he has previously said to you, I will be glad for you to procure it and file it. Unless it shakes to some extent the affidavit already filed, it seems to me that Mr. Hudgins' statement

is rather controlling in this matter. He was the District Attorney—the Assistant District Attorney who conducted the investigation before the grand jury. He knows what witnesses appeared; he knows what they testified about. Unless you have some evidence from him that what he says in the government's affidavit is incorrect, why should we go any further?

Mr. Hogan: If Your Honor please, that is exactly why I say Mr. Hudgins can't make up his mind as to exactly what did go on there. Only last Thursday—and I might say he made that statement before he knew
37 that there was any plea in abatement or motion to quash that Mrs. Stoll had been liberated not in an unharmed condition. He did not at that time know that such a plea had been made, and he came up to me on the street—he volunteered the information—I didn't seek him out because, frankly, at that time I did not know who had presented this case to the grand jury. And he came up to me and volunteered that he was the one who had presented the case to the grand jury, and I asked him then, not once but twice, whether or not anybody had testified before the grand jury on the point of whether or not she was liberated unharmed, and he said there was not.

Now I assume that his memory was as good then as it was on October 4th when he made this contrary affidavit. Of course, I may say when he made the contrary affidavit he had probably read the newspapers and I know that he had conferred with Mr. Brown, the District Attorney.

Mr. Brown: He had not.

Mr. Hogan: Well he told me that he had.

Mr. Brown: I talked to him—

Mr. Hogan (Interrupting): Mr. Brown will you deny that he came out here and signed that affidavit?

Mr. Brown: I certainly will deny that.

Mr. Hogan: Mr. Brown, will you deny that at your instance he did sign it?

Mr. Brown: Certainly it was at my instance he
38 signed it. I prepared the affidavit as disclosed by my records and sent it over to him and he signed it.

Mr. Hogan: Well my point is that after Mr. Hudgins

realized the importance of—

Mr. Brown (Interrupting): I suggest that Mr. Hogan should have gotten an affidavit from Mr. Hudgins at that time.

The Court: Let's review here very briefly the affidavit of Mr. Hudgins—I am not going to read it all. "Claude Hudgins states that he was in charge of the presentation of the evidence that was presented to the grand jury who returned this indictment, and he testified that the following witnesses appeared * * *. The witnesses were duly sworn. John E Tarrent, attorney, testified as to delivering the ransom money—"

Mr. Hogan (Interrupting): May I comment upon that. What John Tarrant says does not bear directly or indirectly upon the point of whether—

The Court (Interrupting): All right, I am going through it all. We will get to the one that you have in mind. "John M. Ridge testified as to the receipt of the ransom money by the railway express agent—

Mr. Hogan (Interrupting): That is not relevant.

The Court (Continuing): "W. L. Alma, manager of the railway express agency testified that he received
39 the package from Ridge. Arch Creager, officer of the Louisville Police Department, who testified that he received the original ransom note and delivered it to John Messmer of the Louisville Police Department; that John Messmer appeared and testified to that fact—

Mr. Hogan (Interrupting): Well that is about certain facts as to the home.

The Court (Continuing): "That Berry V. Stoll appeared and testified as to the finding of the ransom note on the bed and that there were spots of blood which had been recently spilled—

Mr. Hogan (Interrupting): I would like to comment right there that even in that statement of Mr. Hudgins that Berry V. Stoll appeared before the grand jury, I challenge the District Attorney to point out to me wherein Mr. Berry V. Stoll testified as to anything or, rather, what Mr. Hudgins said he testified about her physical condition. It is silent as to that.

The Court: Here is where it gets to your point, I think. "The affiant further states that Mrs. Alice Speed Stoll appeared and testified that on October 10, 1934, she was kidnapped by Thomas Henry Robinson, Jr. after having been brutally struck twice with a lead pipe on and about her head, causing her to lose a great deal of
40 blood; he testified her hands were bound with wire; that she was placed in the bottom of a car and taken to a city she later learned was Indianapolis; that she was held captive for a period of six days; that on numerous and different occasions during that captivity her hands were tightly bound and her mouth was gagged and she was locked in a closet in the apartment in Indianapolis; that at the time of the payment of the ransom money to the kidnapper by his then wife, Mrs. Frances Robinson, she was released, suffering from the severe beating which she had received; that it was necessary that she have, and she did have, medical attention; that said wounds wre not healed at the time of her release and that up to the time of her testimony she was suffering great pain and injury as the result of the brutal treatment and wounds she had received from Thomas Henry Robinson, Jr."

Mr. Hogan: Now I am well aware that Mr. Hudgins did in that affidavit make that statement, and I am just as certain that he made the contrary statement to me on September 30h. That goes to the credibility of—

The Court: Let's have Mr. Hudgins' counter-affidavit if you have it—if this is not correct.

Mr. Hogan: I can't present to the Court any assurance whatsoever that I can obtain Mr. Hudgins' affidavit of anything contrary to that affidavit which you have
41 just read, because he evidently changed his mind from September 30th to October 4th.

The Court: What am I to go on? What he says now?

Mr. Hogan: No, I don't think you can go on what he says now any more than what he said a few days before that. Here is what I say the Court should go on: Mr. Hudgins says now that there was such evidence. He said four days previous to that that there wasn't. I say, let's get the one witness into this court who says that he could

say that, and let's have her interrogated.

The Court: Who is that?

Mr. Hogan: Mrs. Stoll.

Mr. Brown: Now we are coming to the whole purpose. I might say that Mr. Hogan must have known that the statements he alleges Mr. Hudgins made was the very essence of his case. He does not take an affidavit from Mr. Hudgins, but he comes in with affidavits which he now says he made of what Mr. Hudgins said to him. Now we are coming to his real purpose, and that is to get Mrs. Stoll in here in advance of the trial when we have here affidavits of four witnesses setting up the whole chain of circumstances as to the whole brutal crime.

The Court: I am willing to have Mr. Hudgins come here and testify to anything you want him to testify
42 as to this affidavit. If you think this affidavit does not set out the correct facts, and if you want to introduce any testimony about what he said to you which would attempt to discredit his affidavit, I will be glad to hear it. But with that affidavit being accepted as correct or with his testimony substantiating the affidavit, I have no reason to go any further. I am not reviewing the action of the grand jury. I am not trying to decide whether the grand jury was right or wrong in returning the indictment. All I am trying to decide now is whether or not there was any evidence which would support the allegations contained in the indictment and from what Mr. Hudgins affidavit shows, if that is the fact, there certainly was.

Mr. Hogan: Well if Your Honor please, I have no assurance that way, and I might say that I don't believe I can get Mr. Hudgins to go behind the affidavit that he has made here—

The Court (Interrupting): Do you want him on the stand?

Mr. Hogan: I don't believe that it would accomplish any purpose to that effect. I may say that, frankly, I—

The Court (Interrupting): Well all I can say is, if you want him on the stand, we will hear him. If you
43 don't want him on the stand, why I will accept his affidavit as correct. If you want to test his affidavit

by having him personally testify, we will call him and have him testify.

Mr. Hogan: I think that should be done, to clear up whether or not he made that statement to me.

The Court: See if Mr. Hudgins will come out.

Mr. Hogan: And I might say to Your Honor we are not on a fishing expedition—we are not fishing for information. We are just trying to find out whether there was any basis for that particular element of the crime being embodied in the indictment.

While there is a lull in the proceedings, I may call attention of the Court to the fact that the defendant made an application to proceed in forma pauperis, and I don't find in the record the court's ruling on that. I assume that by appointing counsel the Court intended to sustain that motion.

The Court: Yes, the motion was sustained. I don't know that any order has been entered to that effect yet.

Mr. Hogan: I would like for that order to be entered.

Mr. Beckham: It can be accomplished by a separate order entered as of today.

Mr. Hogan: That will be fine, Mr. Beckham.

44 The Court: Now, Mr. Brown, while we are waiting on Mr. Hudgins to come out, we can discuss this motion the government has made to appoint physicians to examine the defendant.

Mr. Brown: Yes, Your Honor. My point, Your Honor, is that I place no reliance on the statement of the defendant as to his condition now or at any time and I think, in view of the ruling of Judge Roche and the statement of Mr. Hogan and Robinson the other day, that there should be some affirmative showing in the record before any plea is received from this defendant, of his mental condition.

Mr. Hogan: If Your Honor please, I think we can reach that, first, by a motion to strike Mr. Brown's motion, and by a written waiver from the defendant—

Mr. Brown (Interrupting): That won't be sufficient.

Mr. Hogan (Continuing): By the defendant and by his counsel that he at this time expressly waives his right to claim or contend that he is now at the present time insane.

The Court: He took back his plea of guilty which he made before because he said he might be insane. He could take this back the same way.

Mr. Hogan: He was permitted to take back that
45 plea, not because of that fact alone but because Judge Roche specifically held that he was not supported by counsel.

The Court: Well that was a double-barreled opinion, wasn't it? The opinion placed a great deal of reliance upon the fact that he was mentally incompetent.

Mr. Hogan: The opinion specifically held that there was no waiver of right to counsel in there.

The Court: But he also said it was the Court's duty, didn't he, to investigate into the question of sanity?

Mr. Hogan: Where there is no waiver.

The Court: When that matter is brought to the Court's attention?

Mr. Hogan: That is true, but it intimated that had there been a waiver, a lawful waiver, on that question, the situation would have been otherwise. And I may say in our motion to strike the government's motion for appointment of psychiatrists, we claim that the question of his sanity is now res adjudicata because the court out there, I think, has established his presently sane condition.

The Court: How?

Mr. Brown: I don't see anything that's in that.

Mr. Hogan: While that opinion may not specifically rule on that point, I think it very strongly intimates that.

46 Mr. Brown: I don't want to rely on intimation.

Mr. Hogan: Nor does the defendant, Mr. Brown.

Mr. Brown: Then he should have no objection to it.

Mr. Hogan: The government contended in that pleading in which its own agent was a party that he was sane and introduced some four of its institutional psychiatrists to establish that fact.

Mr. Brown: I might say that I have no personal doubt of the defendant's sanity at this point or in 1934 or in 1929.

Mr. Hogan: Do you by that statement admit, then, that he is presently sane?

Mr. Brown: I admit nothing. I say in my personal opinion the defendant is sane now, that he was sane in 1934, and that he was sane in 1929. But, in view of Judge Roche's opinion, I feel that we should have some showing in the record as to his present mental condition.

Mr. Hogan: Will you now raise that personal opinion to the dignity of a stipulation that he is sane?

Mr. Brown: I don't know that we could accomplish anything with this defendant by stipulation.

The Court: Do not the authorities authorize an examination of the defendant?

47 Mr. Brown: It undoubtedly does.

The Court: Are there any authorities to the contrary, Mr. Hogan?

Mr. Hogan: I can find no place in the statutes or code for the appointment of anybody to test defendant's mentality, except what was said by Judge Roche that it was the Court's duty and not by a doctor.

The Court: Well how is the Court going to do it? How can he do it without some help by the doctors? I am not an expert on sanity or insanity.

Mr. Hogan: I know that. I don't think it means he cannot waive that. He is represented this time by counsel, and before he wasn't.

Mr. Brown: The court room was alive with counsel interested in Mr. Robinson before.

Mr. Hogan: Well what you say has been specifically overruled by a court of competent jurisdiction, Mr. Brown.

Mr. Brown: They later say that friends of the family and friends of the court on that side of the court room on May 13, 1936, were simply alive with counsel.

Mr. Hogan: Mr. Brown, what you say or what I may say on that point has no bearing because it has been judicially decided to the contrary what you say.

The Court: I gather, though, Mr. Hogan, that
48 you haven't any authority to present in support of your motion to strike the government's motion for the appointment of physicians?

Mr. Hogan: Except, Your Honor, that there is no provision that I can find in the statutes for it, and—I have

looked for it.

The Court: Have you authorities to support your motion for it, Mr. Brown?

Mr. Brown: Yes, Your Honor. I think the leading authority that I have been able to find is the Youtsey case in 97 Fed. (2d) 937, and the Chism case—I said "97 Fed. (2d)," that should be 97 Fed., and the Chism case which I will get right now.

The Court: Can't you send someone for that and read us the pertinent part of the Youtsey case?

Mr. Brown: In the Youtsey case which arose from this District—

The Court: This circuit or this district?

Mr. Brown: Both this circuit and this district. At that time Kentucky was still one district. It was an appeal from Judge Barr's decision, and the Circuit Court of Appeals' decision was rendered by Judge Lurton, and Judge Severens and Judge Clark, District Judges. It is quite a long opinion but I will read that portion of it that is pertinent. It starts with this quotation:

49 "'If a man in his sound memory commits a capital offense, and before his arraignment he becomes absolutely mad, he ought not by law to be arraigned during such frenzy, but be remitted to prison until that incapacity be removed. The reason is, because he cannot advisedly plead to the indictment.'

"To the same effect are all the common-law authorities.

"While an insane man cannot even plead to an indictment, and counsel, having reason to suppose their client too insane to stand a trial, should interpose and make such objection before arraignment, yet it is not technically waived by failure to object before arraignment, and the defense may be interposed after arraignment in bar of a trial."

Then there is a list of authorities (Continuing):

"For even stronger reasons, if it appears after arraignment, and before trial, that the prisoner is probably not capable of making a rational defense, the proceedings should stop until the sanity of the prisoner is determined or restored. Such an issue, when presented, goes to the funda-

mental right of the court to try the main issue, "not guilty." If present insanity does not appear until the trial has begun, the court may submit the objection to the jury
50 along with the principal issue, requiring a special verdict as to the competency of the defendant to understand the proceedings and intelligently defend himself.

"'Every person of the age of discretion is presumed of sane memory until the contrary appears, which may be, either by the inspection of the court, by evidence given to the jury who are charged to try the indictment or, being a collateral issue, the fact may be pleaded and replied to, and a venire awarded, returnable instanter, in the nature of an inquest of office. And this method, in cases of importance, doubt, or difficulty, the court will, in prudence and discretion, adopt.'

"The prima facie showing made by the affidavit of counsel and physicians was that the defendant's mind and memory, as a consequence of epileptic attacks, had become so impaired as that he was unable to advise his counsel as to his defense, or recall transactions which ought to have been within his knowledge, and could not 'remember transactions from day to day,' and that he was unable, in consequence of his impaired mind and memory, to testify for himself. This prima facie showing was made by persons of weight and respectability, and upon that showing the court was asked to make such examination and inquiry as would further tend to throw light upon the question of the fitness of the defendant to be put on his trial at that term of the court.

51 "Having the right to exercise its discretion as to the mode which the court should investigate the mental capacity of the accused to understand the proceedings against him, and rationally advise with his counsel as to his defense, we are confronted with the question as to whether the court in any way investigated and decided the issue thus tendered by the counsel for the accused. Undoubtedly the court was bound to entertain the objection and dispose of it in some way. It is suggested that the court did so by personal inspection, and in that way satisfied itself of the competency of the accused to rationally

conduct his defense. Unless a basis for the confinement of the accused under Section 4851 is sought, it may be conceded that it was competent, where the objection is urged only in bar of a present trial, for the court to determine such an objection by inspection and other private investigation as we are asked to here infer was had. Such a practice finds some sanction under statutes which make it the duty of the court to submit the issue of present insanity to a jury or to a commission or to determine it himself.

"Having had the question tried and considered by the trial judge in the manner stated, and then by the jury along with the principal issue—"

They quoted another case. (Continuing):

52 "The Supreme Court of the State of New York has held that there was no abuse of the discretion of the court in refusing a preliminary inquiry, and that there was on reason for reversing the cause for such a preliminary trial. The contract between the proceedings in the case above and those in the court below is quite striking. The fact that the trial court gave consideration to the issue of present insanity, and determined it by personal inspection, aided by the counsel, opinion, and advice of the jail physician and others, and that it also submitted to the jury the question of the present sanity of the accused, appeared affirmatively upon the record in the Webber appeal."

And this case was reversed by the circuit court because the court didn't have something to that same effect in his mind.

Now the same thing is true of the Chism case which is long and holds the same thing. I will just give you that citation, United States v. Chism, 149 Fed. 284.

The Court: Where is that from?

Mr. Brown: That is an appeal from the District Court of Alabama.

The Court: A circuit court decision?

Mr. Brown: No, Your Honor; it is a district court opinion. The only circuit court opinion was the Youtsey case. That is the case that I rely on, and out of

53 an abundance of caution, and in view of the past his-

tory of this case, I feel some affirmative showing should be in the record, other than the statement of this defendant so he cannot take it back whenever he wants to—before any plea is accepted.

The Court: I feel that in view of the—

Mr. Hogan (Interrupting): If Your Honor please, let me—do you rely upon the Youtsey case, Mr. Brown?

Mr. Brown: Yes I do.

Mr. Hogan: Well I desire to point out that that case got off on this footing, that where the defendant was sound at the commission of the crime, but goes mad between that time and the date of the trial, it then becomes the duty to inquire as to his sanity. We have no such condition here, and for that reason that case is not controlling in this case.

Mr. Brown: He was claiming he was insane at both times.

The Court: It seems to me that, irrespective of decisions on the subject, we have a situation here which demands some action by the court. This defendant was arraigned on this indictment, and pleaded guilty, and that plea has been set aside by another court on the ground that at the time of defendant's plea he did not have counsel,
54 and also there was a question of his sanity. That opinion points out very definitely that it is the duty of the court, when that question is raised, to investigate the question of the defendant's sanity before he takes the plea. Well now if at one time when he makes his plea he later raises the question of insanity, he certainly can raise it again when he makes his plea the second time, and I rather think that in following that decision of Judge Roche in sustaining the writ of habeas corpus, it is the duty of this court to make that investigation.

I overrule the objection of the defendant to—or, rather, the motion to strike the government's motion for the appointment of physicians, and I sustain the government's motion for the appointment of physicians.

Mr. Hogan: Let the record show an exception to the court's ruling on that.

The Court: Yes. Now, Mr. Hogan, you have asked for a rule here to have the United States show cause why

it should not reply to the plea in abatement. Haven't they replied to the plea in abatement?

Mr. Hogan: No. The only thing that they have done is filed a motion to strike. Now that procedure, I may say, was followed in the case of the Evaporated Milk Association v. Roch, which was a mandamus case. The motion for plea in abatement was overruled and in that case
55 they went to the Circuit Court of Appeals and got a mandamus against the trial judge. It was also followed in the case of United States v. Johnson.

The Court: Well what is it you want them to do? Deny those allegations in your plea?

Mr. Hogan: Yes, sir.

Mr. Brown: For the purposes of a legal motion, I didn't want to admit the deficiency of any statement contained in that plea in abatement. I think I have taken the method that has been approved certainly by the Supreme Court in the Almstead case.

The Court: Well I will sustain the motion that the government be required to plead to the plea, and hold that their present plea is sufficient. I don't see why they should be required to plead the way you want them to plead. They can plead any way they want to.

Mr. Hogan: Well, after the Court's ruling of their present plea being sufficient, I may also save an exception.

The Court: I believe that the authorities sometimes hold that it is assumed by the Court that the facts stated in the plea in abatement are denied. For the purposes of this hearing, I am willing to make that assumption.

Mr. Brown: And I will certainly say that they
56 are denied. That is, all facts that are properly denied. Those that are stated on information and belief—

The Court: The affidavits filed in support of their motion to strike certainly take the position that the allegations in the plea in abatement are incorrect.

Mr. Hogan: I may say that the modern or present day method for that is by the motion for a rule.

The Court: Well I sustain your motion.

Mr. Brown: And you held my response has been sufficient?

The Court: Yes.

Mr. Hogan: And to that part I except. Rather, the defendant excepts to that part of the rule.

The Court: Is there any word from Mr. Hudgins?

Mr. Brown: He is here.

CLAUDE HUDGINS was called as a witness by the Court and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by the Court.

Q. Mr. Hudgins, some question has arisen here with reference to the affidavit which you gave in support of the government's motion to strike the plea in abatement which has been filed in support of that motion, and Mr. 57 Hogan has filed his affidavit with reference to certain statements which he claims were made by you to him, and apparently there is some inconsistency between the two and we wanted to straighten out the facts. Mr. Brown, you may take him on your affidavit, if you wish, and then Mr. Hogan can take him on his.

Mr. Brown: Suppose I hand you Mr. Hogan's affidavit and my affidavit—

The Court (Interrupting): Here they are. Let him read them both. I expect we are only interested in the question about Mrs. Stoll, aren't we?

Mr. Hogan: That's all, Your Honor.

Mr. Hudgins: Let me read Mr. Hogan's first (Reading).

The Court: Now read the one the government has there—just with reference to Mrs. Stoll.

(Mr. Hudgins reads.)

Mr. Brown: I think Your Honor could take judicial notice of the fact that to be hit in the head with a lead pipe ordinarily does not cause no harm.

Mr. Hogan: Now, if Your Honor please, may I call your attention to the Parker case, among which facts were that they had taken Wendell from Brooklyn, New York, to New Jersey, and had burned his bare feet with matches in

an endeavor to try to get him to admit that he was the
58 perpetrator of the Lindbergh kidnapping, and they tied him and tortured him for several days, but when they liberated Wendell, he was in an unharmed condition. Then the question arose as to whether or not there was a death penalty clause in the indictment, whether or not the trial court had erred in not having the trial in that case in the county in which the crime is said to have been committed, and the Court very definitely pointed out that it was not a death case because the victim had been liberated in a sound condition. And they said in that case that Congress seems to have preferred a live and unharmed victim to a dead victim, and that is the reason why that question arose.

The Court: Do you wish to ask him any questions, Mr. Brown?

Mr. Brown: No. You may ask him the questions if you want to.

Examination by the Court.

Q. Mr. Hudgins, you were the Assistant United States District Attorney at the time the indictment was considered by the grand jury in this case?

A. Yes, sir.

Q. And you have seen the affiadvit filed by the government as to the substance of what Mrs. Stoll testified to before the grand jury. Is that correct?

59 A. That is correct, as I remember it, yes, sir.

The Court: Now, Mr. Hogan, do you want to ask him anything?

Mr. Hogan: Yes, sir.

Cross-examination by Mr. Hogan.

Q. Mr. Hudgins, you have offices at the present time in the Kentucky Home Life Building, do you not?

A. Correct.

Q. Do you recall Thursday afternoon, September 30th, 1943—last Thursday—coming up and volunteering to me in front of the Fifth Street entrance to the Kentucky Home Life Building that you had participated in presenting this case to the federal grand jury?

A. No, I did not go up to you voluntarily. I was going out of the building and you were coming across from the courthouse, and I said something to you—I believe I asked you if you were defending in that case; and then I started on, after making a few remarks, and you stopped me about her being hurt while in captivity. I told you at the time that my recollection wasn't real clear on that and that I would have to refresh my recollection before I could answer that question. I believe that was the substance of our conversation. Then the next day you came to my office
60 and asked me to make an affidavit. So I told you I still hadn't had time to—I had been sick and busy and I still had not had an opportunity to refresh my recollection, and that I would have to do that first. You later came up and I told you that I had refreshed my recollection by looking over some memorandums and looking at the list of witnesses who had been—who had testified before the grand jury, and I still was not satisfied that she was hurt while in captivity, but I did remember that she testified that she was still suffering at the time she was released from captivity from this wound that she received before she was taken away; and that she had to go to the doctor after she was released. Now that is the sum and substance of it.

Q. Well now let's confine the conversation between you and me on the sidewalk in front of the building there last Thursday. I will ask you if you didn't state to me that you were the one who had presented the evidence to the grand jury—

A. (Interrupting) You asked me if I was, and I told you yes.

Q. I will ask you if you didn't tell me that voluntarily, and that I did not know that until you had made that statement?

A. You asked me that and I told you yes.

Q. And if, after we had talked some time there,
61 you didn't make the statement that Mrs. Stoll did not mention before the grand jury anything about her condition at the time she was released?

A. I thought you were talking about being injured or hurt during the time she was up there, and I told you then

that I wasn't sure about that, and I told you the last time you talked to me that I still wasn't sure and couldn't answer that question until I had refreshed my recollection. And I told you that, after refreshing my recollection, I couldn't tell whether she said she was injured while she was there, but she was complaining of injury after she was released. That is what she was complaining of after she got down here.

Q. I am aware that you incorporated that statement in your affidavit, but I am confining the question to last Thursday afternoon.

A. I told you my recollection wasn't clear on it and that I would have to refresh my recollection on it before I could tell you one way or the other.

Q. I will ask you if you didn't say these words, or words to this effect, "As I recall, she did not testify that she was hurt when she was released?"

A. I may have said that, but I told you that I was not refreshed on it and what I thought you had reference to was that she was hurt up there at the time and not with
62 reference to the previous injury.

Q. But you do recall making such a statement?

A. I recall making the statement to you that day that I wasn't sure but my recollection was that she didn't make the claim that she was hurt while in captivity. Then I said that it struck me, in talking there with you, that possibly she was knocked down once up there, but that I was not sure about that; and I told you the last time I talked to you that I still wasn't sure about it.

Q. Now then I talked to you on Saturday and urged you to make an affidavit to the effect of what you had told me previously. That is true, is it not?

A. You had an affidavit prepared there; it wasn't what I told you but it was what you wanted me to tell you.

Q. You didn't sign that affidavit did you?

A. No I did not.

Q. Now I will ask you if you didn't tell me on that occasion that Mr. Brown had talked to you and wanted you to make a statement?

A. I told you that Mr. Brown wanted me to make a

statement, and that I was going to have to refresh my recollection before I could make either of them; and after I refreshed my recollection I told you that I would make a statement of the facts as I remembered them.

Q. And you did, of course, subsequently make this
63 affidavit and furnish it to Mr. Brown, the now United States District Attorney?

A. Yes.

Q. Now at the time you talked to me on Thursday you did not know what the defendant was relying upon in his plea in abatement?

A. Well you told me, I think—if I remember right, you told me what he was relying upon.

Q. But up to that conversation you had not any knowledge of what was contained in that plea in abatement?

A. No.

Cross-examination by Mr. Brown.

Q. I talked to you over the telephone, didn't I?

A. Yes.

Redirect Examination by the Court.

Q. The facts then, Mr. Hudgins, as you recall them after having refreshed your recollection, are as they appear in your affidavit filed by the government?

A. That is correct.

Q. All right.

64 The Court: Now, doesn't that conclude the question?

Mr. Hogan: Now I am not the judge—I am legging for the defendant and I am—

The Court (Interrupting): You are not willing to concede but you haven't anything further to offer?

Mr. Hogan: I am not willing to concede anything, if Your Honor please, on that.

The Court: Well, as I take it, we have the evidence before us that Mrs. Stoll was not delivered unharmed. That is, there is evidence that that was given to the grand jury. I offered you the opportunity to present any counter-evidence that you wished to present on that point, and I take it from your position now that you have no other coun-

ter-evidence. You suggested Mr. Hudgins and he has testified, and there isn't anything else that you wish to present on that specific point, is there?

Mr. Hogan: The only possible way it could be presented, as I see, would be to interrogate the grand jurors themselves.

The Court: Well, unless you give me some basis for going behind the proceedings of the grand jury, I don't think I am warranted in doing it. We all know the fundamental rule that a grand jury's activities are not to be inquired into in the absence of some showing that they
65 should be inquired into. You haven't given me any showing, as yet. You have given me what you hoped you might try to find out but you haven't given me any basis for doing it, have you?

What I mean is this, I am not trying to see all of the evidence that went before the grand jury but if there was any evidence that she was returned not unharmed, I believe the motion to quash the plea in abatement would be overruled. But what we have already is sufficient to sustain that position. Outside of the grand jurors themselves, that is all, then?

Mr. Hogan: Outside of the grand jurors themselves, that is all the defendant has.

The Court: Then let the plea in abatement be considered insufficient, and the motion by the government to strike it be sustained.

Mr. Hogan: Exception.

The Court: With exceptions to the defendant.

Mr. Brown: Then I suggest, Your Honor, that we put the arraignment date up one week and let the defendant appear for arraignment at that time.

Mr. Hogan: Before that is done I desire to file a motion to dismiss, and a motion to elect and a demurrer.

Now, the motion to elect is based upon the conten-
66 tion—the other day it was stated that the first count in this indictment had been nolled. I am unable to find any order in the record to that effect. Therefore, I must assume that the first count is still open.

Mr. Brown: I think the judgment affirmatively shows

that the first count was dismissed.

The Court: Dismissed by the court or nolled?

Mr. Brown: Dismissed by the court.

Mr. Beckham: Dismissed by the court on motion of Judge Hamilton.

The Court: As to all of the defendants?

Mr. Brown: No. The jury found Mr. Thomas Henry Robinson Sr. and Mrs. Frances Robinson not guilty on the conspiracy count, and the first count charges a conspiracy and—Mr. Beckham, I think if you will examine the order—

Mr. Hogan (Interrupting): Of course, if it had been dismissel as to the other two defendants, it is still alive and open as to this defendant until some order is entered.

Mr. Brown: That is correct. The judgment would be about May 13, 1936. I know Judge Roche assumed it had been dismissed and made mention of the fact that Judge Hamilton had dismissed it.

The Court: That was a motion for a new trial, wasn't it?

67 Mr. Brown: No.

Mr. Beckham (Reading): "Came the United States by the United States Attorney and the defendant, and the Court informed the defendant of the charges contained in this indictment. It is ordered that count one of this indictment be and it is hereby nolled."

The Court: Doesn't that take care of the question, Mr. Hogan?

Mr. Hogan: Not just exactly. There is a little bit of difference between a nolle and an outright dismissal. The government could, it might be a useless thing, but it could come back at some future time and reinstate the first count or, rather, present it to another grand jury.

The Court: I don't know. So far as this case is concerned, it seems to me that that count is out of the picture.

Mr. Brown: It certainly appears so.

The Court: What might happen some time else I have no way of—

Mr. Hogan (Interrupting): Judge, we are just not taking any chances on the record. We are going to try to practice this case as it should be and I had not seen any—

The Court (Interrupting): Well it is the Court's construction of that order—I can't do any more than
68 construe that order, but that count is no longer in effect.

Mr. Hogan: If that is the Court's interpretation, then I assume that the Court will overrule this motion to elect?

The Court: Yes.

Mr. Hogan: Then I have the motion to dismiss and the demurrer.

The Court: What is the basis of those?

Mr. Hogan: The chief basis of the demurrer is that the second count contains duplicitous matter. The second count charges in the conjunctive by the words "and" that the three defendants "did unlawfully transport and carry away"; whereas the language of the statute is "that they did transport or"—"or" in the disjunctive—"aid and abet, etc." There are some authorities on the point that, where there are two or more crimes contained in the same count, they are duplicitous. Now I do think that we assume that the defendant could have transported and carried away, as charged in the indictment, whereas he may or may not have aided and abetted the other two defendants or, as a corollary of that, they may or may not have aided him.

Mr. Brown: They didn't aid—they found them not guilty.

Mr. Hogan: It is not what the grand jury did
69 or didn't do, it is the language of this indictment that we are concerned with. We think—the defendant thinks it is duplicitous for one count containing more than one charge.

Now the motion to dismiss is based upon violation of the Sixth Amendment of the Constitution, which guarantees to every defendant a speedy trial. They have had this defendant for about seven years, and that's not a speedy trial, and I don't think it could be contended that it is a speedy trial under the circumstances—

The Court (Interrupting): Well I think his point was that he got too speedy a trial. He got one in 48 hours, and now he complains about it.

Mr. Hogan: No, his point was that he didn't get any trial, Judge.

The Court: Well the trial he got was within 48 hours and that, I gather from Judge Roche's opinion, was too speedy.

Mr. Hogan: Well, what he got was too speedy, but we won't concede that he got a trial.

The Court: You are not seriously pressing that point, are you?

Mr. Hogan: Yes, I am, Judge.

The Court: Well, let that motion and that demurrer be overruled, with exception to the defendant.

70 Mr. Brown: If we could set the arraignment date for, say, a week from today, at 9 o'clock?

The Court: You had better make it at 10 o'clock.

Mr. Hogan: What day is that?

The Court: That would be next Wednesday. It makes no difference. You can have it any day you want.

Mr. Hogan: That is all right.

Mr. Hogan: Now I desire at this time to make an oral motion that a reasonable bond be fixed for the defendant.

Now I may call the Court's attention to the fact that this defendant has no desire to run away. He has fought many, many years to try to get back into this court and have a trial of this case against him. There is no incentive, or would be no incentive, after having labored so long and so arduously, to get back into this court to try to skip out at this time.

Now his father and his wife were charged in the same indictment with the same offense as he was and, as I recall, their bonds were fixed at $5000.00 each, and I submit that that in this case would be reasonable as to this defendant.

71 Mr. Brown: Of course I certainly want to appear as objecting to that. The original bonds of the father and the wife who admittedly had no part in the beating of Mrs. Stoll and the primary kidnapping of Mrs. Stoll, were originally set at $25,000.00.

Mr. Hogan: I may correct your statement. It was originally set at $50,000.

Mr. Brown: $50,000. And it was only reduced after the United States desired to avoid a trial until all three defendants could be brought together and be tried, and the judge said that he would order an immediate trial unless the United States Attorney, Judge Sparks, would agree to a reduction in the bond. Then it was agreed to because the United States Attorney desired, if possible, to have all three defendants tried together.

I certainly want to be heard in very strenuous opposition as to whether this defendant should be entitled to any bond at all. I have some cases that hold that in cases where capital punishment may be imposed that the defendant is not even entitled to bond.

I also want to call attention to the fact that he has been guilty of offenses before this offense—

Mr. Hogan (Interrupting): That is objected to.

Mr. Brown: On a motion for bond we can consider that.

The Court: Don't we have to consider the back-
72 ground of the whole matter?

Mr. Hogan: The fixing of the bond, of course, is within the Court's discretion.

The Court: Well I mean whether he has bond at all, in a capital case. Of course the amount is always fixed by the Court, but as to whether bond should be given at all in this case, don't we have to look at the whole background of the case?

Mr. Hogan: It is entirely within the discretion of the Court.

The Court: The time that this man will be in custody is not very long before he can be tried. We have had some consideration of the available dates that could be given for this trial, and I might state to counsel now that the way we have already assigned cases on our fall docket for trial, we have two still tentative dates for the trial of this case, depending upon whether the defendant wants a trial immediately, or would rather have a short delay in order to prepare.

So we could have a trial of this case on November 1st; that time still remains open on that calendar. Or, if the

defendant wanted a trial before that, we could arrange to continue some other cases and give him an earlier date. Or, if he would like a later date than November 1st, we could give him November 29th.

73 Mr. Hogan: Well, if Your Honor please, we would certainly like the last date mentioned because there is a world of preparation that we must do in this case especially after the lapse of so many years.

The Court: Well, of course, the date will be fixed after the arraignment, but I am merely suggesting that to counsel so they can have it in mind when the time comes for fixing a date.

I believe, in view of the background of this case, and what has gone on, and everything connected with it, it is probably advisable that, if the Court has the discretion to do it, as I understand it has, to deny the motion for bond.

Now the only thing that remains is the arraignment?

Mr. Brown: The arraignment.

The Court: Next Wednesday morning at 10 o'clock, then we will take the arraignment.

Court convened in this matter, pursuant to adjournment, at 10 o'clock, October 13, 1943, and the following proceedings were had:

Appearances:

Eli H. Brown, III, for the United States.
Robert E. Hogan, for the defendant.

74 The Court: Robinson, last week I appointed some doctors to examine you for the purpose of informing the Court whether or not you were mentally competent at the present time when you would be formally arraigned and plead to this indictment, in view of the statements which were contained in Judge Roche's opinion of the California court. It seemed to be his view that the Court should make some investigation of that fact, to make a finding, as to whether or not you were mentally competent at the present time before any plea was taken, and I want to advise you and your attorney at this time that those

doctors made the report to me that at the present time they found you mentally competent.

On this indictment, which was returned on the 20th of October, 1934, by the grand jury sitting for the Western District of Kentucky, you were charged in the second count with having unlawfully transported a kidnapped person in interstate commerce, having unlawfully transported Mrs. Alice Stoll from Louisville, Kentucky, to Indianapolis, Indiana, the kidnapped person being not a minor, and that she was not returned unharmed.

I think the indictment has been formerly read to you?

Mr. Robinson: Yes, sir.

Mr. Hogan: We formally waive the reading of
75 the indictment.

The Court: How does the defendant plead?

Mr. Robinson: Not guilty.

The Court: All right, let a plea of not guilty be entered.

I indicated to your counsel before, and possibly to you, that there were two possible dates that this case may be tried, on November 1st and November 29th; and it was suggested at that time that you preferred the date of November 29th.

Mr. Hogan: We prefer November 29th, Judge.

The Court: All right, let the case be set down for trial at 9 o'clock on November 29th. Will the government be ready at that time?

Mr. Brown: Yes, we will be ready.

The Court: And the defendant will be ready also?

Mr. Hogan: The defendant will try to be ready.

The Court: All right.

1* **TRANSCRIPT OF EVIDENCE**

Louisville, Kentucky,
November 29, 1943.

Heard before:

Honorable Shackelford Miller, Jr., United States District Judge for the Western District of Kentucky, at Louisville,

and a jury.

Appearances:

Eli H. Brown, III, United States Attorney, and
J. D. Inman, Assistant United States Attorney, for the plaintiff.
Robert E. Hogan, Kentucky Home Life Building, Louisville, Kentucky, for the defendant.

2 PROCEEDINGS

The Court: The case of the United States against Thomas Henry Robinson, Jr. Is the government ready?

Mr. Brown: Yes, Your Honor.

The Court: Is the defendant ready?

Mr. Hogan: The defendant is ready, Your Honor.

The Court: Now those of you who are subpoenaed here this morning as jurors, twelve of you will serve. The jury in this case will be selected in the usual way by drawing from the box and by the challenges of the respective parties. In addition to the twelve regular jurors, it appearing from what we know of this case that it will last a week or maybe more, there will be two alternate jurors also selected who will stay with the other members of the jury and listen to the evidence and to the trial. If it does happen that during the trial one of the regular jurors becomes ill so that he or she cannot go on with the trial, an alternate juror is drawn to take the place of that person. In that way there will be two alternates to take care of two pos-

*Inset numbers appearing at outer edge of text indicate page numbers of original stenographic transcript of evidence.

sible casualties so that the jury will not have to be dismissed and the trial started over again on account of sickness. That means that 14 of you then will sit during this trial, 12 regular jurors and 2 alternate jurors.

The offense which is charged in this case involves, under some conditions, a possible penalty of death,
3 and by reason of that fact the Court will enter an order that the jury will be kept in custody during the trial of this case. Arrangements have been made to take care of the jurors in a comfortable manner at the Brown Hotel. Rooms have been provided where they will spend their evenings and also take their meals there together. That means that for some of you, maybe for all of you who serve on the jury, there will be some inconvenience. The Court realizes that but I want to impress upon you that when you are examined by the attorneys to be selected on this jury that that is no excuse itself for not being willing to serve. Jury duty is a civic duty that every citizen has. As I have pointed out time and again to the many people who come to this court, of foreign birth, and who ask to be naturalized, to be made American citizens, to acquire the rights of citizenship they are not only acquiring the rights and privileges but they are also acquiring the duties of American citizens likewise, and one of your duties as an American citizen is to serve on juries when and if called if it is at all possible to do so. Too many of us I think are willing to accept the privileges of citizenship without at times respondng to the call of duty because we feel it is going to inconvenience us to some extent or that we want to do something else which is more pleasant.

Accordingly, I don't want any of you to try to be
4 excused by reason of the fact that you are not going to enjoy being in custody, although it will not be strict custody, but being separated from your neighbors and your friends for the time that this case will be going on. Of course, if there is some special reason why you could not possibly so serve, the Court will consider it and of course be glad to grant your request if it so appears necessary, such as serious illness in the family or some condition at home that makes it impossible for you to leave your home

for the few days that it will be necessary.

Of course, we all know at this time that a great many of the boys and women are performing their duties of citizenship which in a way is far more arduous than what you are being called upon to do at this time.

I want you to know that every defendant that comes to trial is entitled to the service of qualified jurors just as if someone of your family or some friend of yours was on trial and you would want them to qualify in the case and not be excused for trivial reasons. You owe that like thought to the defendant who is on trial in this case. Accordingly, keep that in mind as the names are called.

Due to the fact that the number of challenges that are provided by law in a case of this kind are fairly numerous, it may take us most of the day, or all day, to complete the selection and impaneling of this jury. But after the jury is impaneled and the 14 are selected, the rest of you may be excused.

It is possible that, even though you may be called and put into the jury box, temporarily, that either side may excuse you for reasons of their own. Therefore, it will be an academic question with you and you will not be required to serve in any event. Therefore, very few of you will be called upon to serve in this case.

A question of practical importance has been brought to my attention which naturally comes to the minds of conservative men and women, and that is whether or not the jurors would be required to pay their hotel bills at the Brown Hotel while they are there. I am glad to advise you that the government will take care of that and the government will pay the jurors' expenses while they are here.

Mr. Marshal, will you call the first 12 jurors?

Mr. Marshal: All right.

The Court: As soon as we get 12 people in the box there will be enough seats for everybody who is standing out there.

The Marshal: Come around as I call your name.

The Court: I will ask you to please answer as soon as your name is called, and also step up and take the box.

6 The Marshal: Mrs. Mildred Anderson
Mrs. Gertrude C. Griggs
Thomas N. Allen
Joseph C. Powers
Winthrop Allen
J. Lawrence Abell
Hugh Beavin
Joseph J. Edelen
Asa Basham
Evarts Speed, Jr.
Mrs. Ida Greathouse
Mrs. James Ballard
Mrs. Evelyn T. Wilson

No, Mrs. Wilson will not take the box as I already have 12.

The Court: Now, for those of you who are seated in the jury box, and also to the other members of the jury panel, I will make this brief statement of the case so that you will understand what the trial generally is about.

This indictment which was returned against the defendant, Thomas Henry Robinson, Jr. on the 20th day of October, 1934, charges in the second count, which is the only count for your consideration, that on or about the 10th day of October, 1934, in Jefferson County, Kentucky, the defendant, Thomas Henry Robinson, Jr., did unlaw-
7 fully transport or cause to be transported from Louisville, Kentucky, to Indianapolis, Indiana, Mrs. Alice Stoll who was not a minor and who was not transported by her parents, who had been unlawfully seized, kidnapped and abducted and carried away from her home by the defendant and held Mrs. Stoll for ransom or reward; and that the defendant, while Mrs. Stoll was in their custody, did beat, injure, and harm her and did not liberate her unharmed.

The defendant there is seated at the table in the middle between the three parties who are at that table.

Anyone of you related by blood or marriage to the defendant?

I understand that probably some of you, maybe all of you, have heard something about this case because it

has been in the newspapers quite a bit and you have that knowledge, but outside of the general knowledge that you may have gathered from the newspapers, do anyone of you know anything about this case—that is, have you had any connection with the case in any way or have you talked to the parties who have been in the case in any way?

Is there any reason why any one of you cannot sit as a juror in this case and render a fair and impartial verdict from the evidence as it will be presented to you at this trial?

Mr. Brown, will you ask the questions for the government?

8 Mr. Brown: Mrs. Anderson, under the law given to you by the Court, and if the facts justify it, would you be willing to return a verdict which would cause the death penalty to be imposed upon this defendant?

Mrs. Anderson: Yes.

Mr. Brown: Mrs. Griggs, under the law as given to you by the Court and if the facts as testified to from the witness stand, would you be willing to vote for a death penalty for this defendant?

Mrs. Griggs: Yes.

Mr. Brown: Mr. Adams, under the law given to you by the Court, and if the facts justify it, would you be willing to vote for a death penalty against this defendant?

Mr. Adams: No, sir.

The Court: What is your answer?

Mr. Adams: No, sir.

The Court: Are you conscientiously opposed to a penalty which would be death if the law and the facts justified it?

Mr. Adams: That's right.

The Court: You may be excused.

The Marshal: Is that Mr. Thomas N. Adams?

Mr. Adams: Yes.

The Marshal: Vacate the box.

9 (Mr. Adams leaves the box.)

The Marshal: Mrs. Katherine Tate.

Mr. Brown: No, I think the next juror was Mrs. Wilson.

The Marshal: Yes, Mrs. Evelyn Wilson.

The Court: I suggest that you do not move over. Just leave the space vacant where it is so as to keep the order.

Mr. Brown: Mrs. Wilson, under the law given to you by the Court, and if the facts as disclosed in the proof justify it, would you be willing to vote for a death penalty against this defendant?

Mrs. Wilson: Yes.

The Court: I might say to the jury panel, the entire panel, that in the Federal Court, which is different from the practice in the State Court, ordinarily the jury has nothing to do with the verdict except to return a verdict of guilty or not guilty. The Federal Court, after a verdict is rendered generally the Court would be the only person concerned in fixing the penalty. In this particular case where the charge is transportation in interstate commerce of the kidnapped person held for reward, that particular statute does provide that the death penalty may be imposed if the jury so recommends. I want it distinctly understood by everyone that the jury would not fix the penalty in any event. It would be a case merely of recommendation by the jury which the Court could or could not follow, as deemed best and advisable.

Mr. Brown: Mr. Powers, under the law as given to you by the Court, and if the facts justify it, would you be willing to recommend the imposition of the death penalty?

Mr. Powers: Yes.

Mr. Brown: Mr. Allen, under the law as given to you by the Court, and if the acts justify it, would you be willing to recommend the imposition of the death penalty against this defendant?

Mr. Powers: Yes.

Mr. Brown: Mr. Abell, under the law given to you by the Court, and if the facts justify it, would you be willing to recommend the imposition of the death penalty against this defendant?

Mr. Abell: Yes.

Mr. Brown: Mr. Beavin, under the law given to you by the Court, and if the facts justify it, would you be

willing to recommend the imposition of the death penalty against this defendant?

Mr. Beavin: Yes.

Mr. Brown: Mr. Edelen, under the law as given to you by the Court, and if the facts justify it, would you be willing to vote recommending the death penalty?

11 Mr. Edelen: Yes.

Mr. Brown: Mr. Basham, under the law given to you by the Court, and if the facts as testified to justify it, would you be willing to vote for the death penalty?

Mr. Basham: No, I would not.

The Court: What is your name?

Mr. Basham: Basham.

The Court: Mr. Basham, do you mean that you have conscientious scruples to prevent you from voting for the death penalty even if the facts and the law justify it?

Mr. Basham: Yes.

The Court: You may be excused.

The Marshal: Mr. Basham will vacate the box. Mrs. Katherine Tate will take the box.

Mr. Brown: Mrs. Tate, under the law given to you by the Court, and if the facts as testified to justify it, would you be willing to vote recommending the death penalty against this defendant?

Mrs. Tate: Yes.

Mr. Brown: Mrs. Greathouse, under the law as given to you by the Court, and if the facts as testified to justify it, would you be willing to vote recommending the death penalty against the defendant?

Mrs. Greathouse: Yes.

Mr. Brown: Mr. Ballard, under the law given to

12 you by the Court, and if the facts as testified to justify it, would you be willing to vote recommending the death penalty against the defendant?

Mr. Ballard: Yes.

Mr. Brown: Mr. Speed, under the law given to you by the Court, and if the facts as testified to justify it, would you be willing to vote recommending the death penalty against the defendant?

Mr. Speed: Yes.

Mr. Brown: I pass the jury to you.

13 Mr. Hogan: If Your Honor please, I will change my location so that I will be able to face the Jury.

Mr. Brown: You may have this chair, Bob.

Mr. Hogan: I have my material here, so I will sit over here.

Mr. Hogan: Mrs. Anderson, where do you live?

Mrs. Anderson: 205 N. Longworth.

Mr. Hogan: Are you a housekeeper?

Mrs. Anderson: Yes.

Mr. Hogan: What is the business of your husband?

Mrs. Anderson: Lumber.

Mr. Hogan: I didn't understand.

Mrs. Anderson: Millwork.

Mr. Hogan: Does he run his own business or is he employed?

Mrs. Anderson: He and his brother.

Mr. Hogan: And who is his brother?

Mrs. Anderson: Frank Anderson.

Mr. Hogan: You are Mrs. Sid Anderson, I believe.

Mrs. Anderson: Yes, sir.

Mr. Hogan: Sid Anderson and his brother, Frank Anderson, operate or did operate the Anderson Manufacturing Company on Beech Street in Parkland?

Mrs. Anderson: Yes, sir.

Mr. Hogan: Are you related by the ties of blood or marriage to Mrs. Alice Speed Stoll?

Mrs. Anderson: No, sir.

14 Mr. Hogan: Or to her father, Mr. William S. Speed?

Mrs. Anderson: No, sir.

Mr. Hogan: Or to her mother, Mrs. Virginia Speed?

Mrs. Anderson: No, sir.

Mr. Hogan: Or to her grandfather, J. B. Speed?

Mrs. Anderson: No, sir.

Mr. Hogan: Or to her step-grandmother, the philanthropist, Mrs. Hattie Bishop Speed, who is, of course, deceased?

Mrs. Anderson: No, sir.

Mr. Hogan: Or are you related by the ties of blood or

marriage to any member of the Speed, Stoll or Frederick M. Sackett families?

Mrs. Anderson: No, sir.

The Court: Mr. Hogan, I expect maybe we can ask those questions generally to the whole panel sitting in the box because if such facts should develop I think they probably should be excused, instead of taking time to ask each individual.

Mr. Hogan: I will ask those similar questions to each member and all members collectively in the box, whether or not you or any of you are related by the ties of blood or marriage to Mrs. Alice Speed Stoll, to her father, Mr. William S. Speed, to her mother, Mrs. Virginia Speed, her grandfather, J. B. Speed, or her step-grandmother, Mrs. Hattie Bishop Speed, deceased.

15 Mr. Speed: I am related.

Mr. Hogan: You are Mr. Evarts Speed, Jr., I believe.

Mr. Speed: That's right.

Mr. Hogan: What is that relationship?

Mr. Speed: Mrs. Speed is a cousin of mine.

Mr. Hogan: Mrs. Virginia Speed is a cousin of yours?

Mr. Speed: No. Mrs. Alice Speed Stoll is a cousin of mine, and consequently her father.

Mr. Hogan: Your father and her father are brothers?

Mr. Speed: No.

Mr. Hogan: What is the relationship there?

Mr. Speed: Mrs. Stoll's grandfather and my grandfather were first cousins.

The Court: I believe the relationship is such that it disqualifies the juror. You may step aside.

The Marshal: Henry Ackerman, Jr.

The Court: Mr. Ackerman, you heard me state to the jurors the general nature of this case, the charge that has been made by this indictment,—are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Ackerman: No.

The Court: Do you know anything about the facts of this case other than what any ordinary citizen may know by reading in the newspaper?

Mr. Ackerman: I have worked at the Speed residence up on Lexington Road.

16 The Court: You mean before, or afterwards or at the time?

Mr. Ackerman: Before and afterwards.

The Court: Were you working there at the time?

Mr. Ackerman: No, sir.

The Court: Have you heard it discussed by reason of that fact?

Mr. Ackerman: I have; yes, sir.

The Court: Would the discussion which you have heard give you any definite or fixed opinion in the matter?

Mr. Ackerman: To a certain extent, I believe it would.

The Court: All right, Mr. Ackerman, you may step aside.

The Marshal: Mrs. Elizabeth F. Davidson.

The Court: Mrs. Davidson, you heard me explain the case to the other members of the panel. Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mrs. Davidson: No.

The Court: Do you know anything about the facts of the case other than what everybody generally knows?

Mrs. Davidson: No.

The Court: Is there any reason why you cannot sit and act as a juror in this case and render a fair and impartial verdict in the case according to the law and evi-

17 dence as it will be presented to you?

Mrs. Davidson: No.

The Court: Mr. Brown, do you care to ask her any questions?

Mr. Brown: Yes. Mrs. Davidson, under the law given to you by the Court and if the facts testified to justify it, will you be willing to vote rendering the imposition of the death penalty?

Mrs. Davidson: Yes.

Mr. Brown: I pass her to you.

Mr. Hogan: Addressing my remarks specifically to Mrs. Davidson now—where do you live, Mrs. Davidson?

Mrs. Davidson: 258 Meadow Road.

Mr. Hogan: In what section of the city is that?

Mrs. Davidson: It is out near Bowman Field.

Mr. Hogan: What is your business or profession.

Mrs. Davidson: I am a widow. I have none.

Mr. Hogan: Are you a housekeeper?

Mrs. Davidson: Yes.

Mr. Hogan: You hesitated a moment. Do you mean by that that you keep your own house?

Mrs. Davidson: No. I live with my parents.

Mr. Hogan: How long have you lived at that address?

Mrs. Davidson: Since 1928.

Mr. Hogan: Fifteen years, isn't it?

18 Mrs. Davidson: Yes.

Mr. Hogan: What was the business or profession of your husband?

Mrs. Davidson: He was a salesman, drug salesman.

Mr. Hogan: And by whom was he employed, or for whom did he sell?

Mrs. Davidson: Two—Sharp & Dunn and Meade-Johnson.

Mr. Hogan: Are you related by the ties of blood or marriage to Mrs. Alice Speed Stoll?

Mrs. Davidson: No.

Mr. Hogan: Mr. William S. Speed?

Mrs. Davidson: No.

Mr. Hogan: Mrs. Virginia Speed?

Mrs. Davidson: No.

Mr. Hogan: J. B. Speed?

Mrs. Davidson: No.

Mr. Hogan: Mrs. Hattie Bishop Speed, deceased?

Mrs. Davidson: No.

Mr. Hogan: Are you related by the ties of blood or marriage to Mr. Berry V. Stoll?

Mrs. Davidson: No.

Mr. Hogan: Or to Mr. Charles C. Stoll, deceased?

Mrs. Davidson: No.

Mr. Hogan: Or to Chardes E. Stoll?

Mrs. Davidson: No.

Mr. Hogan: Charles W. Stoll?

19 Mrs. Davidson: No.

Mr. Hogan: William A. Stoll?

Mrs. Davidson: No.

Mr. Hogan: Or to any member of the Stoll family?

Mrs. Davidson: No.

Mr. Hogan: Or to any member of the Stoll, Speed or Sackett families?

Mrs. Davidson: No.

Mr. Hogan: Are you related by the ties of blood or marriage to the wives of Berry Stoll, Charles C. Stoll, Charles E. Stoll, Charles W. Stoll or William A. Stoll?

Mrs. Davidson: No.

Mr. Hogan: Are you acquainted with any of those people that I have enumerated?

Mrs. Davidson: No.

Mr. Hogan: Are you now, or have you ever been, or has any member of your family or household been employed by the Byrne-Speed Coal Company?

Mrs. Davidson: No.

Mr. Hogan: The Louisville Cement Company?

Mrs. Davidson: No.

Mr. Hogan: The Speed Portland Cement Company?

Mrs. Davidson: No.

Mr. Hogan: The Black Star Coal Company?

Mrs. Davidson: No.

Mr. Hogan: The Pioneer Coal Company?

20 Mrs. Davidson: No.

Mr. Hogan: Or to any business operated by the Speed family or the Sackett family?

Mrs. Davidson: No.

Mr. Hogan: Are you an employee or have you ever been, or has any member of your household ever been, employed by the Stoll Oil Refining Company?

Mrs. Davidson: No.

Mr. Hogan: Or any business operated by the Stoll family?

Mrs. Davidson: No.

Mr. Hogan: Are you related by the ties of blood or marriage to Mrs. Olive Speed Sackett, the widow of Frederick M. Sackett, deceased?

Mrs. Davidson: No.

Mr. Hogan: I might say as a matter of information, that Mr. Frederick M. Sackett was formerly United States Senator and later Ambassador to Germany. Are you employed, or have you been, or have any members of your family or household ever been, employed or associated with any partnership, firm or corporation affiliated or associated with the Stoll Oil Company, the Byrne-Speed Coal Company, the Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, the Frederick M. Sackett interests, or any other business or venture operated or controlled by the Speed, Stoll or Sackett families?

21

Mrs. Davidson: No.

Mr. Hogan: Have you now, or have you ever had, any business, civic, religious, charitable or social contacts with Mrs. Alice Speed Stoll, her father, William S. Speed, her mother, Mrs. Virginia Speed, her step-grandmother, Hattie Bishop Speed, deceased, her grandfather, J. B. Speed, deceased, or any member of the Stoll or Sackett families?

Mrs. Davidson: No.

Mr. Hogan: Have you ever attended any social functions or musical recitals given by or at the home of Mrs. Hattie Bishop Speed, or at any other place by her or in which she had some interest or control?

Mrs. Davidson: No.

Mr. Hogan: Has any member of your family or household ever been employed in any of the filling stations operated by the Stoll Oil Company or in which they had any interest?

Mrs. Davidson: No.

Mr. Hogan: Are you or any member of your family or household a stockholder or bondholder in the Stoll Oil Company, the Byrne-Speed Coal Company, the Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, the Frederick M. Sackett interest, or any other business or venture operated or controlled by the Speed, Stoll or Sackett families?

Mrs. Davidson: Not that I know of.

22 Mr. Hogan: Does there exist in your mind, Mrs. Davidson, such a state of mind in regard to this case or to this defendant, Thomas H. Robinson, Jr., that you cannot try this case impartially and without prejudice to the substantial rights of this defendant?

Mrs. Davidson: No.

Mr. Hogan: Have you read at any time in the newspapers or magazines, or any other place, an account of the commission of the crime with which this defendant is charged?

Mrs. Davidson: No, I don't believe so. I have read the newspapers.

Mr. Hogan: You have read in the newspapers the account of the crime with which this defendant is charged?

Mrs. Davidson: Not so much at the time.

Mr. Hogan: Well, at any time?

Mrs. Davidson: Well, yes, I have read the newspapers.

Mr. Hogan: Now, if you have, as you say, read those accounts, do you believe that notwithstanding that you have read those articles, that you can render an impartial verdict according to the law and the evidence?

Mrs. Davidson: Yes.

Mr. Hogan: I will ask you if you read the article in the Roto-Magazine Section of the Courier-Journal of November 21st.

23 Mrs. Davidson: No.

Mr. Hogan: 1943, this year?

Mrs. Davidson: No.

Mr. Hogan: That article about this case, or the circumstances or facts of it?

Mrs. Davidson: No, I have not.

Mr. Hogan: Have you formed any opinion or impression based upon rumor, or have you expressed an opinion? Have you ever expressed an opinion?

Mrs. Davidson: No.

Mr. Hogan: Have you ever formed any opinion based upon rumors that you might have heard about this case?

Mrs. Davidson: No, I don't believe I have.

Mr. Hogan: You hesitated a moment. Have you or have you not, Mrs. Davidson?

Mrs. Davidson: No, I don't believe I have. I did read the account, but I have an open mind.

Mr. Hogan: If you had formed an opinion on a rumor you would know that fact, would you not?

Mrs. Davidson: Yes.

Mr. Hogan: Have you formed any opinion whatsoever based upon rumor?

Mrs. Davidson: No, I don't believe I have.

Mr. Hogan: You say you don't believe you have. Will you come out positively and say you have or have not?

24 Mrs. Davidson: I have not.

Mr. Hogan: Are you guardian or ward?

Mrs. Davidson: Am I?

Mr. Hogan: Yes, or master or servant, landlord or tenant, employer or employee on wages of a member of the family of Mrs. Alice Speed Stoll or the Stoll, Speed or Sackett families?

Mrs. Davidson: No.

Mr. Hogan: Have you ever at any time complained against this defendant in any criminal prosecution or proceeding?

Mrs. Davidson: No.

Mr. Hogan: Did you serve on the Grand Jury which returned the indictment in this case in October, 1943?

Mrs. Davidson: No.

Mr. Hogan: Were you a member of former juries sworn to try Thomas H. Robinson, Sr., the father of this boy, and Frances Robinson, his then wife, who were jointly indicted with this defendant in October, 1934?

Mrs. Davidson: No.

Mr. Hogan: Are you now, or have you ever been, or are any members of your family or household, stock or bond holders, office holders or directors of any of the United States Government corporations, associations or agencies, such as the Federal Land Bank, the Federal

25 Reserve Bank, the Reconstruction Finance Corporation, the AAA, generally known as the Farm Association, the Commodity Credit Corporation, or any other of the United States alphabetical divisions or set-ups?

Mrs. Davidson: No.

Mr. Hogan: Or are you, or any member of your household, now, or have you at any time ever been, directly or indirectly employed by the United States?

Mrs. Davidson: No.

Mr. Hogan: Do you now or have you ever received a pension, salary, bonus, soldier or sailor's allotment benefit or remuneration in any form from the United States?

Mrs. Davidson: No.

Mr. Hogan: Do you receive, or have you received or participated in receiving, a railroad retirement pension allotment or payment?

Mrs. Davidson: No.

Mr. Hogan: Do you now or have you ever received, directly or indirectly, from the United States, any subsidy allowance, bonus or crop cut-out payments?

Mrs. Davidson: No.

Mr. Hogan: Are you now, or have you ever been, a member of any board, commission or agency of the United States, such as the Civil Service Commission, the War Manpower Commission, the Transportation Com-
26 mission, Rationing Board, Labor Board, OPA, generally referred to as OPA but specifically as Office of Price Administration, or Selective Service and Training Boards, usually designated as Draft Boards, or any other board or commission?

Mrs. Davidson: No.

Mr. Hogan: Are you now, or have you ever been, an office holder or appointee of the United States Government or any of its agencies or boards?

Mrs. Davidson: No.

Mr. Hogan: Do you entertain any prejudice against one charged with a crime who interposes as a defense a plea of insanity?

Mrs. Davidson: No.

Mr. Hogan: By that I mean, are you a person who believes that because a person is charged with a crime and interposes a plea of insanity that that plea may or may not be a sham plea or an excuse for crime?

Mrs. Davidson: No.

Mr. Hogan: Are you sure about your feeling in re-

gard to that question?

Mrs. Davidson: Yes, I am.

Mr. Hogan: Do you, or will you have any prejudice against one interposing a plea of insanity as a defense who thereafter is shown to have made a recovery and is restored to sanity?

27 Mrs. Davidson: No.

Mr. Hogan: Have you formulated any opinion whatsoever as to the guilt or innocence of this defendant?

Mrs. Davidson: No.

Mr. Hogan: Is any person related to you by the ties of blood or marriage now serving in a branch of the military service of the United States?

Mrs. Davidson: Yes.

Mr. Hogan: Who is that person?

Mrs. Davidson: A brother.

Mr. Hogan: Is he in the foreign service?

Mrs. Davidson: Yes.

Mr. Hogan: And what is the name of your brother, please?

Mrs. Davidson: Lieutenant Edwin F. Franz.

Mr. Hogan: F-r-a-n-z?

Mrs. Davidson: That's right.

Mr. Hogan: What was your brother's business before his entry into military service?

Mrs. Davidson: He was with the sanitation end, Mr. Dugan, at the Board of Health.

Mr. Hogan: Mrs. Davidson, if you, after hearing the evidence of this case and the law as given to you by His Honor, Judge Miller, should entertain any reasonable doubt either as to the capacity, I mean the legal capacity, of this defendant to commit any of the acts charged in

28 this indictment, or any reasonable doubt as to his guilt, would you resolve that doubt in favor of the defendant, Thomas Henry Robinson, Jr. and acquit him?

The Court: I think a question of that sort requires some explanation from the Court, which would ordinarily come at the end of the case, but can be said now and repeated then, that under the law in criminal cases, if there remains a reasonable doubt in the mind of any juror as to

the guilt of the defendant, such juror should find a verdict of not guilty. I will so instruct you. I believe, Mr. Hogan, the effect of Mr. Hogan's question is that if the Court gives you such an instruction, would you find a verdict of guilty, and I will tell you that is your duty to so do when the Court so instructs you. That's the effect of your question, isn't it, Mr. Hogan?

Mr. Hogan: Yes, sir. You say as a positive statement of fact that, after you have heard all the evidence and the law as given to you by Judge Miller, if you should entertain any reasonable doubt as to his guilt or as to his legal capacity to commit any of the acts charged in the indictment, you would resolve that doubt in favor of this defendant and render a verdict or vote for an acquittal?

Mrs. Davidson: Yes, if the Judge so instructs.

The Court: I think your question should include,
29 Mr. Hogan, the fact that the Court so instructs as a matter of law.

Mr. Hogan: The Court will so instruct, Mrs. Davidson. Now, assuming that the Court does give you such an instruction, if you should have any reasonable doubt as to the guilt of this defendant or as to his legal capacity to commit any of the acts charged in this indictment, would you vote for an acquittal?

Mrs. Davidson: Yes.

Mr. Hogan: Now, do you believe that simply because this defendant has been indicted that that is some or any evidence of his guilt?

The Court: I believe that question likewise requires some knowledge on the part of the juror of what the law is in this case. As in every criminal case, the Court will so instruct the Jury, now and later, too, that the return of an indictment by the Grand Jury is no evidence in any way of the defendant's guilt and will not be considered by any member of the Jury as any evidence of his guilt. It is merely the charge by the Government that this defendant has committed the crime alleged in that indictment. You will hear the case and determine the case solely upon the evidence you hear from the witness-stand, giving no consideration to the fact that an indictment has been re-

turned by a Grand Jury heretofore.

30 Mr. Hogan: Mrs. Davidson, would the fact that this defendant has been indicted create in your mind a prejudice or bias, or even a suspicion, that he may be guilty?

Mrs. Davidson: No.

Mr. Hogan: Do you believe that you can sit upon this Jury and after hearing the law and all the evidence, that you could render a fair and impartial verdict?

Mrs. Davidson: Yes.

Mr. Hogan: Uninfluenced by any pressure or motive or opinion whatsoever?

Mrs. Davidson: Yes.

Mr. Hogan: Your Honor, please, I will have to go back over these other jurors with these same questions.

The Court: Let me speak to counsel a minute.

The following was out of the presence of the Jury:

The Court: There are certain questions which you have asked which undoubtedly will be asked all the jurors, such as whether they have any people employed by the Reconstruction Finance Corporation, or by these different corporations in the coal business, and about relationship to the Speeds and Stolls, and I expect all of those questions could be asked to the group as a whole, the ones you have got now, then after the strikes are in you can lump them and ask them. Of course, questions as to what any-

31 one has read about the case and any opinion they have had you can reserve those for individual asking, but those general questions I think should be referred to the Jury as a whole. You can go over them once more or you can ask them if they have heard them.

Mr. Hogan: I believe I will frame this question and ask them generally as a whole.

The Court: It has come to my attention that neither side requested that the Jurors be sworn on the voir dire. That can be done.

Mr. Hogan: I think that can be done by reiteration.

The Court: After we swear them all you can ask Mrs. Davidson if her answers to the questions you asked will be the same.

Before the Jury:

The Court: Now, members of the Jury panel, I have just discussed with counsel the procedure of not having to ask each individual member of the Jury certain routine questions which counsel has indicated he would like to have an answer to. I think a lot of those questions can be addressed to the jurors as a group with reference to the connection, either business, social or otherwise, they might have with any members of the Speed or Stoll families or any enterprises that they may be engaged in. Ac-
32 cordingly, Mr. Hogan will address you as a group with respect to those questions and all of you can give them your attention and make answers to them. Thereafter he can take each individual juror and address specific questions to that jury as he may think advisable. I believe, following this procedure, I will ask that the Jury stand and take the oath that you will truthfully and fully answer the questions which will be asked you by Mr. Hogan.

The Jury was then duly sworn by the Clerk.

Mr. Hogan: Mrs. Davidson, you heard the questions that I have just put to you before you were sworn. Now that you are sworn, if those same questions were asked you, would you make the same answers now that you did previously?

Mrs. Davidson: Yes.

Mr. Hogan: Mrs. Anderson, would you, and do you now, make the same answers since you have been sworn as a prospective juror as you did previously or before you were sworn?

Mrs. Anderson: Yes, sir.

Mr. Hogan: You reiterate those same answers to the questions that I had asked you, assuming that if I would now ask you the same questions your answers would be the same as before.

Mrs. Anderson: Yes, sir.

Mr. Hogan: For the present, as indicated by His
33 Honor, I am going to ask all of you collectively these general questions. I might say that in law, as His Honor will probably tell you, if you remain silent and do not answer, your answer indicates that it is a negative an-

swer. In other words, your answer, if you did answer to it, would be "No." Therefore, with that in view and with that in mind, if you do have any answers, will you please speak out affirmatively so that we might know what your answers to those particular questions might be, as we have no way of knowing when you remain silent just what your answer is unless you speak out. We, as I say, assume in law that if you remain silent your answer is "No."

Are you related by the ties of blood or marriage to Mrs. Alice Speed Stoll, her father, William S. Speed, her mother, Mrs. Virginia Speed, her grandfather, J. B. Speed, or to her step-grandmother, Mrs. Hattie Bishop Speed, deceased?

I take it by your silence, then, that your answer to that question is no.

Are you related by the ties of blood or marriage to any member of the Speed, Stoll or Sackett families?

I take it by your silence likewise that your answer is no.

Are you acquainted with any member of the Speed, Sackett or Stoll families?

Mrs. Ballard: Yes.

34 Mr. Hogan: Mrs. Ballard, what is the nature—

The Court: Probably, wouldn't it be well to just take the names of these jurors and go on with the general questions, then come back to this?

Mr. Hogan: Well, I might lose track of just who they might be.

The Court: All right.

Mr. Hogan: Mrs. Ballard, what is the nature and extent of that acquaintanceship?

Mrs. Ballard: Over a period of years. I don't know Mrs. Stoll well, but I have known her for a long time. I know the Speeds and Mrs. Sackett.

Mr. Hogan: Over a period of some ten, fifteen or twenty years?

Mrs. Ballard: Yes.

Mr. Hogan: Have you had social contacts, civic contacts, charitable contacts, with them?

Mrs. Ballard: Yes.

Mr. Hogan: Know them rather generally and over a period of a long time?

Mrs. Ballard: That's right.

Mr. Hogan: Would the fact that you have had those contacts and that acquaintanceship with the members of those families sway your verdict or—

Mrs. Ballard: I don't think so. I think I can give a fair verdict.

35 Mr. Hogan: Do you think and believe that you can sit upon this jury and after hearing the evidence and the law given to you by His Honor, that you could fairly and imparitally and without prejudice render a fair and impartial verdict?

Mrs. Ballard: I think so; yes.

Mr. Hogan: Now, the gentleman on the back row.

Mr. Allen: My answer to those questions would be just the same as Mrs. Ballard's.

The Court: The name is Winthrop Allen.

Mr. Hogan: Mr. Allen, you have known those families and the members of those families I have mentioned over a period of years, have you not?

Mr. Allen: Yes.

Mr. Hogan: You have had social, business, civic and charitable contacts with the members of those families?

Mr. Allen: Yes.

Mr. Hogan: With that in mind, could you sit upon this Jury and render a fair and impartial verdict after hearing the evidence and the law?

Mr. Allen: I could.

Mr. Hogan: Now, we will get back to these general questions.

The Court: There was a third one on the jury.

Mr. Hogan: Mrs. Anderson.

36 Mrs. Anderson: Mrs. George Stoll taught me in Sunday School about twenty-three years ago.

Mr. Hogan: Would that fact influence your verdict in this case? Would it embarrass you to sit upon a jury in which members of their family will be called as prosecuting witnesses?

Mrs. Anderson: No.

Mr. Hogan: Do you believe that you could fairly and impartially render a fair verdict after hearing the evidence and the law?

Mrs. Anderson: Yes.

Mr. Hogan: My next general question then to all of you collectively—are you related by the ties of blood or marriage to Berry V. Stoll, Charles C. Stoll, deceased, Charles E. Stoll, Charles W. Stoll, William A. Stoll, or any member of the Stoll family?

I take it by your silence that your answer to that question is no.

Are you acquainted with any member of the Stoll families. Of course, Mrs. Ballard, you know Mrs. Alice Stoll and you know Mr. Stoll?

Mrs. Ballard: Yes.

Mr. Hogan: Mr. Berry Stoll?

Mrs. Ballard: Yes.

Mr. Hogan: Are you acquainted with any of the
37 other members of the Stoll family?

Mrs. Ballard: No.

The Court: I notice you are naming some of the Stoll boys. There is a George Stoll, I believe.

Mr. Hogan: I will include in that list of Stolls, Mr. George Stoll. Do you know him, members of the panel collectively, or are you related by the ties of blood or marriage to Mr. George Stoll?

Is he a cousin of Mr. Charles C. Stoll?

The Court: He is one of the four brothers, as I understand it, isn't he?

Mr. Brown: Yes, that is correct.

Mr. Hogan: Mr. Allen and Mrs. Ballard, you have already answered that you are acquainted with the member of the Stoll family, and is the nature and extent of that acquaintanceship about the same as it is with the members of the Speed and Sackett families?

Mr. Allen: Yes.

Mrs. Ballard: I am only acquainted with Berry Stoll. I don't know any of the others.

Mr. Hogan: Just what is the nature and extent of your acquaintanceship with Mr. Berry Stoll, Mrs. Ballard?

Mrs. Ballard: Just a speaking acquaintance.

Mr. Hogan: Have you ever been in Mrs. Alice Stoll's home?

38 Mrs. Ballard: No.

Mr. Hogan: Has she ever been in yours?

Mrs. Ballard: No.

Mr. Hogan: Have you ever been at the Hattie Bishop Speed home at Garvin Place and Ormsby?

Mrs. Ballard: Yes.

Mr. Hogan: At which time Mrs. Stoll was there?

Mrs. Ballard: Well, I can't remember that. It has been a good many years ago. She might or might not have been there. I have been to French lectures and musicals there. Very probably she was there.

Mr. Hogan: Addressing myself to you and Mr. Allen again, the fact that you are acquainted with Mr. Berry Stoll, possibly Mr. Allen acquainted with other members of the Stoll family, would that influence your verdict in this case?

Mrs. Ballard: No.

Mr. Allen: It would not.

Mr. Hogan: Would it embarrass or humiliate you to sit upon this jury, considering that acquaintanceship with those members of those two families, if you found it within your belief after hearing the evilence and the law that a verdict of not guilty should be returned by you?

Mr. Allen: It would not.

Mrs. Ballard: No.

Mr. Hogan: I will address my remarks now to the

39 members collectively. Are you an employee, or have you ever been, or has any member of your family or household been, employed by the Byrne-Speed Coal Company, the Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, or any business operated by the Speed or the Sackett family?

I take it by your silence that your answer is no.

Are you an employee, or have you ever been, or has any member of your family or household been, employed by the Stoll Oil Refining Company or any business operated

by any member of the Stoll family?

Mr. Beavins: I had a brother that was working six or eight years ago, if I am not mistaken, I may be mistaken on that—he was working for the Stoll Oil Company.

Mr. Hogan: What is your name?

Mr. Beavins: Beavins—Hugh Beavins.

Mr. Hogan: You are from Lebanon, Mr. Beavins?

Mr. Beavins: Yes.

Mr. Hogan: Did he work at the main office of the Stoll's or did he work—

Mr. Beavins: Wel, he had a clerical job of some kind. I don't know what it was.

Mr. Hogan: Where is he now employed?

Mr. Beavins: He is employed by the Huber & Huber Transfer Company.

40 Mr. Hogan: Would the fact that your brother was formerly an employee of the Stoll Company influence your verdict in this case?

Mr. Beavins: No, sir.

Mr. Hogan: Now to all the members again—are you related by the ties of blood or marriage to Frederick M. Sackett, deceased, or to his widow, Mrs. Olive Speed Sackett?

I take it that your answer is no.

Are you employed, or have you been, or have any members of your family or household ever been, employed or associated with any partnership, firm or corporation affiliated or associated with the Stoll Oil Refining Company, the Byrne-Speed Coal Company, the Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, the Frederick M. Sackett interest, or any other business or venture operated or controlled by the Speed, Stoll or Sackett families?

I take it that to those questions or that question, your answer is no.

Have you now, or have you ever had, any business, civic, religious, charitable or social contacts with Mrs. Alice Speed Stoll, Mr. William S. Speed, Mrs. Virginia Speed, Mrs. Hattie Bishop Speed, deceased, or with her grandfather, J. B. Speed, or any members of the Stoll or

Sackett or Speed families?

41 Mrs. Ballard: That same question, the social contact.

Mr. Hogan: Yes, we have gone over that. We know your acquaintanceship, as to you, Mrs. Ballard, and as to you, Mr. Allen. As to the rest of the members in the box, your answer, I take it, is no.

Have you ever attended social functions or musical recitals or lectures given by or at the home of Mrs. Hattie Bishop Speed or any member of the Speed, Stoll or Sackett families?

Mrs. Ballard: Yes.

Mr. Hogan: Your answers, Mr. Allen and Mrs. Ballard, have already been listed. Have you or any member of your family or household ever been employed at any of the filling stations operated by the Stoll Oil Company or in which they had or now have any interest?

I might explain the formation of that question. Some of the oil companies, which includes the Stoll Company, lease or have what is known as independent contractors operating their filling stations. Some of the stations the Stoll Oil Company own and operate themselves, others they have an arrangement with persons under what is known as an independent contractor relationship. So that question is, whether any member of your family or household is employed or has ever been employed by the Stoll Oil Company filling stations or stations in which they have some interest.

42 Are you or any member of your family or household a stockholder or bondholder in the Stoll Oil Company, the Byrne & Speed Coal Company, the Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, the Frederick M. Sackett interests, or any other business or venture operated or controlled by the Speed, Stoll or Sackett families.

I take it that your answer to that question is no.

Are you a bona fide housekeeper and citizen of the State of Kentucky, and, of course, are you over the age of twenty-one years.

I will ask each individual member in the box—

The Court: I might interpose there, that you assume their answer is yes.

Mr. Hogan: I assume your answer to that question is yes, with the possible exception of Mrs. Davidson because she lives at the home of her father and mother. That's true, is it not, Mrs. Davidson?

Mrs. Davidson: Yes.

Mr. Beavins: I live at the home of my mother, too.

Mr. Hogan: Now, Mr. Beavins, let's find out about your arrangement there. What is your arrangement as to your residence?

Mr. Beavins: I run a farm, and I run the farm for my mother. My mother is old and I operate the farm.

43 The Court: Who owns the farm.

Mr. Beavins: My mother.

Mr. Hogan: I will ask the Court whether or not that constitutes a housekeeper.

The Court: I will get the views of counsel on it, if they will come here and talk with me a minute.

Mr. Hogan: We will come back to that.

Has any member of this whole panel in the box or any of you ever served upon a jury in this Federal Court within the past twelve months?

Mrs. Wilson: We were all on the panel before.

The Court: You understand, Mr. Hogan, that this jury—

Mr. Hogan: Oh, yes. Previous to the calling of service for this term, has any member previous to the calling of you for service at this term, which began in September, I believe—

The Court: October.

Mr. Hogan: October—ever served upon a jury in the Federal Court within twelve months prior to that time?

Any member of this panel serve upon a jury in the state court within the past twelve months?

Mr. Edelen: Yes, sir.

Mr. Hogan: The first man to answer was J. D. Edelen. You are from Springfield, are you not, Mr. Edelen?

Mr. Edelen: Yes.

44 Mr. Hogan: Just when did you serve?

Mr. Edelen: In October.

Mr. Hogan: This year?

Mr. Edelen: Yes.

Mr. Hogan: In the Washington Circuit Court?

Mr. Edelen: Yes, sir.

Mr. Hogan: The gentleman back there. What is your name?

Mr. Abell: J. Lawrence Abell. I was on the Grand Jury in Lebanon in April and May of this year.

Mr. Hogan: What is your name?

Mr. Abell: J. Lawrence Abell.

Mr. Hogan: One other gentleman who served?

Mr. Powers: I served on the Circuit Court.

Mr. Hogan: In Jefferson County?

Mr. Powers: Meade County.

Mr. Hogan: Meade County?

Mr. Powers: Yes, last January.

Mr. Hogan: Of 1943?

Mr. Powers: Yes, sir.

Mr. Hogan: What is your name?

Mr. Powers: J. C. Powers.

Mr. Hogan: I address my questions to all of you as a whole—are you or any member of your family or household a stockholder, director or member of any business firm or corporation which now does or has in the past done business with the United States or any of its branches,

45 agencies or corporations, including any defense or war plant owned, controlled, leased, supervised or operated in furtherance of the war effort or home defense effort?

Mr. Allen: Yes.

Mr. Hogan: Mr. Allen.

Mr. Allen: I am employed by The Mengel Company which has a great many defense orders.

Mr. Hogan: What is your position with the Mengel Company, Mr. Allen?

Mr. Allen: Buyer for one of the branches of the company.

Mr. Hogan: Then you, as buyer for one of the branches come in direct contact and business relationship with offi-

cers and agents of the United States Government?

Mr. Allen: I do.

Mr. Hogan: Your Honor, please, I think that's sufficient for his disqualification.

The Court: I expect in these days and times everybody has some contact with the Government, even if it is by the way of paying income tax. I don't think mere contact with the Government is enough to disqualify him. You can ask him further any effect it has had on him, if it has given him any favorable or unfavorable opinion.

Mr. Hogan: Mr. Allen, without disclosing any military secrets, which I know you won't and the Court won't permit it, and we don't want those, is your business rela-

46 tionship and transactions with the Government and its officers and agents considerable?

Mr. Allen. Yes, sir.

Mr. Hogan: The Mengel Company is, of course, a very large woodworking institution?

Mr. Allen: Yes, sir.

Mr. Hogan: Does that company, and do you as its officer, sell to the United States Government or to its subsidiaries, agents or war plants, considerable material?

Mr. Allen: Yes, sir.

Mr. Hogan: You as the buyer supervise and have control of those transactions, do you not?

Mr. Allen: To a considerable extent, yes.

Mr. Hogan: Will that fact influence your decision in this case in which the United States Government is the plaintiff, the prosecutor?

Mr. Allen: Certainly not.

Mr. Hogan: You think that the fact that you have business relationship on a large scale with the United States Government would not enter into your decision in this case whatsoever?

Mr. Allen: I am sure it would not.

Mr. Hogan: Your Honor, please, just for the purpose of the record, I want to challenge the calling of Mr. Allen.

47 The Court: The challenge is overruled.

Mr. Hogan: And let the record note an exception.

We will get to the next general question to all of the members. Are you employed, or have you ever been or have any members of your family or household ever been employed or associated with any partnership, firm or corporation affiliated or associated with the Stoll Oil Refining Company, the Byrne-Speed Coal Company, the Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, the Frederick M. Sackett interests, or any other business or venture operated or controlled by the Speed or Sackett or Stoll families?

I take it that your answer to that question is no.

Have you now, or have you ever had, any business, civic, religious, charitable or social contacts with Mrs. Alice Speed Stoll, William S. Speed, Mrs. Virginia Speed, Mrs. Hattie Bishop Speed, J. B. Speed, or any members of the Stoll or Sackett families?

Mrs. Ballard: Yes.

Mr. Brown: I think that question has been answered.

Mr. Hogan: It has been answered. I will withdraw that question.

Are you, or any member of your family or household, a stockholder or bondholder in the Stoll Oil Company, the Byrne Speed Coal Company, the Louisville Cement
48 Company, The Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, the Frederick M. Sackett interests, or any other business or venture operated or controlled by the Speed, Stoll or Sackett families?

I take it that your answer is no.

Does there exist in you such a state of mind in regard to this case or to this defendant that you cannot try this case impartially or without prejudice to the substantial rights of this defendant?

I take it that your answer is no.

Have you read at any time in the newspapers or magazines an account of the commission of the crime with which this defendant is charged?

Mrs. Greathouse: You mean recent?

Mr. Hogan: At any time. Mrs. Ballard acknowledges

to have read about it. Mr. Allen acknowledges to have read about it. Mr. Beavins acknowledges to have read about it. Mrs. Anderson to have read about it. And Mr. Edelen, you have read about it. And your name, Madam?

Mrs. Tate: Mrs. Tate.

Mr. Hogan: Mrs. Tate, you have read about it?

Mrs. Tate: Yes.

Mr. Hogan: The lady on the back row.

Mrs. Wilson: Mrs. Wilson.

Mr. Hogan: Mrs. Wilson, you have read about it?

49 Mrs. Wilson: Yes.

Mr. Hogan: Mr. Abell, you have read about it?

Mr. Abell: Yes, sir.

Mr. Hogan: Mrs. Davidson, you have read about it?

Mrs. Davidson: Yes, sir.

Mr. Hogan: And the man from Meade County, you have read about it?

Mr. Powers: Yes, sir.

Mr. Hogan: Now, if you have, as you say you have, read an account in the newspaper, do you believe nevertheless that you can render an impartial verdict according to the law and the evidence?

By Jurors: Yes.

Mr. Hogan: Do each of you who acknowledge to have read about this article believe that you can render a fair and impartial verdict according to the law and the evidence?

By Jurors: Yes.

Mr. Hogan: Have you formed any opinion or impression based upon rumor or upon newspaper or magazine statements about the truth of which you have expressed an opinion?

Let me read that question again, so that you will understand it. Have you formed any opinion or impression whatsoever, based upon rumor or upon newspaper or magazine statements, about the truth of which you have expressed an opinion?

50 In other words, have you expressed an opinion about the truth of rumors or impressions that you have gotten from newspapers or magazines, or otherwise?

I take it that your answer to that question is that you have not.

Have you read, or did you read, this article in the Roto-Magazine Section of the Courier-Journal of November 21, 1943, entitled, "Stoll Kidnaper Gambles Life For Freedom."

Mrs. Ballard: I read it.

Mr. Hogan: Mrs. Ballard, you read it?

Mrs. Ballard: Yes, sir.

Mr. Hogan: And Mr. Edelen, you read it?

Mr. Edelen: Yes, sir.

Mr. Beavins: I think I read that.

Mr. Hogan: And Mr. Beavins, you read it? Anybody else read it?

Did you form any opinion after reading that newspaper article as to the guilt or innocence of this defendant?

Mrs. Ballard, I will address myself to you for the present.

Mrs. Ballard: I read it just as I read a detective story.

Mr. Hogan: After you read it, what impression as to the guilt or innocence of this defendant did it make upon you?

51 Mrs. Ballard: Nothing one way or the other. I would have to listen to the evidence before I could tell.

Mr. Hogan: Now, Mr. Edelen, what impression or opinion did you form in your mind as to the guilt or innocence of this defendant after you read the article?

Mr. Edelen: None.

Mr. Hogan: Did it sway your mind or prejudice your mind in any way against this defendant?

Mr. Edelen: No, sir.

Mr. Hogan: Did anybody else acknowledge to have read that article?

Mr. Beavins: Yes, I did.

The Court: I think the gentleman on the end did.

Mr. Beavins: Yes, sir.

Mr. Hogan: What impression or bias or prejudice, if any, did the reading of this article create in your mind?

Mr. Beavins: None at all.

Mr. Hogan: Did you form any opinion as to the guilt

or innocence of this defendant?

Mr. Beavins: No, I did not.

Mr. Hogan: After reading that article?

Mr. Beavins: I think not.

Mr. Hogan: To those of you who acknowledge to have read it, do you say that you come into this Court with a free and open mind, ready to receive the evidence and
52 the law and then be guided by what you think is right after that evidence and the law is given to you?

Mrs. Ballard: Yes.

Mr. Hogan: Does that go for you, Mr. Beavins, Mr. Edelen?

Mr. Beavins: Yes.

Mr. Edelen: Yes.

Mr. Hogan: Now, to all of you—are you guardian or ward, attorney or client, master or servant, landlord or tenant, employer or employee on wages of a member of the families of Mrs. Alice Speed Stoll or the Speed, Stoll or Sackett families?

I take it that your answer to those questions is no.

Have you ever complained against this defendant in any criminal prosecution or proceeding?

Did you or did any of you serve upon the Grand Jury which returned the indictment in this case in October, 1934?

Mr. Beavins: I was on the Jury, the Grand Jury, but I just don't remember what year it was, if this Stoll case came up. I don't know.

Mr. Hogan: The question is, whether you served upon the Grand Jury and heard evidence, and were you a member of the Grand Jury which returned this indictment in this case we are going to try.

53 Mr. Beavins: That's what I say, I don't think that I was on the Grand Jury. However, I served here one year on the Grand Jury, but I don't remember anything about this case.

Mr. Hogan: Would you not remember if such case had been presented to you in the Grand Jury room?

Mr. Beavins: Well, I think I would.

Mr. Hogan: Do you recall that it was or it was not?

Mr. Beavins: No, sir, I do not.

Mr. Hogan: You have a fairly good memory, do you not?

Mr. Beavins: Fairly good; yes, sir.

54 Mr. Hogan: You have no recollection that you were on that Grand Jury?

Mr. Beavins: No.

Mr. Hogan: Were you a member—that is, all of you collectively or any of you, a member of the former petit jury in this Federal Court sworn to try Thomas H. Robinson Sr. and Mrs. Frances Robinson who were jointly indicted with this defendant in October 1934?

I take it by your silence that your answer is no.

Are you now, or have you ever been, or are any members of your family or household stock or bondholders, office holders, or directors of any of the United States government corporations, associations, or agencies such as the Federal Land Bank, the Federal Reserve Bank, the Reconstruction Finance Corporation, the AAA, or any other of the United States alphabetical divisions or subdivisions?

Mr. Beavins: Yes, I am.

Mr. Hogan: Now, Mr. Beavins, what is your connection with them?

Mr. Beavins: I am connected with the Triple A in Green County.

Mr. Hogan: That is the AAA?

Mr. Beavins: Yes.

Mr. Hogan: In what capacity?

55 Mr. Beavins: I am community member chairman.

Mr. Hogan: Do you receive any compensation as the Chairman of that AAA?

Mr. Bevins: Yes sir.

Mr. Hogan: By whom is that salary paid you?

Mr. Bevins: I suppose it comes from the Treasurer of the United States.

Mr. Hogan: In other words you are on the payroll of the United States government?

Mr. Bevins: Yes.

Mr. Hogan: Now, Mr. Edelen, I believe you are a member of what?

Mr. Edelen: I didn't understand about the Federal Land Bank.

Mr. Hogan: Yes. Do you have any connection with the Federal Land Bank?

Mr. Edelen: No sir. I misunderstood you. I borrowed some money—

Mr. Hogan: (Interrupting): No. I will read my question again. I expect a lot of people who have farms have called on the Federal Land Bank for a little financial assistance.

Mr. Edelen: I didn't understand you.

Mr. Hogan: Are you now, or have you ever been, or
56 has any member of your family or household been stock or bond holders, office holders, or directors in any of the United States government corporations, associations or agencies such as the Federal Land Bank, the Federal Reserve Bank, the Reconstruction Finance Corporation, the AAA, the Commodity Credit Corporation, or any of the United States alphabetical divisions or subdivisions?

Mr. Edelen: No sir.

Mrs. Ballard: My husband is an Appeals Agent. Does that come under that?

Mr. Hogan: No. I have another question, Mrs. Ballard. If you will just reserve your answer, we will come down to that.

Mr. Powers: I am.

Mr. Hogan: What is your answer?

Mr. Powers: I am a member of the Triple A.

Mr. Hogan: Do you receive a salary, Mr. Powers, for that service?

Mr. Powers: Yes sir.

Mr. Hogan: And that salary is paid to you by the Treasurer of the United States?

Mr. Powers: Yes sir.

Mr. Hogan: Is any other member of the jury connected in the manner I have indicated with those agencies or subdivisions?

57 I take it by your silence that you are not.

Are you or any member of your household now or

have you at any time ever been directly or indirectly employed by the United States?

Mr. Beavins: I have.

Mr. Hogan: Of course that answer goes to you and to Mr. Powers. Now, Mr. Allen, what is your answer to that question?

Mr. Allen: I was an officer in the army in the last war.

Mr. Abell: And I was a seaman in the Navy in the last war, in 1918.

Mr. Hogan: What type officer were you, Mr. Allen?

Mr. Allen: Captain in the Artillery.

Mr. Beavins: I was in the ROTC during 1918.

Mr. Hogan: You didn't get into the SATC, did you, Mr. Beavins?

Mr. Beavins: I was in the ROTC.

Mrs. Ballard: Does my question come in there. My husband is an Appeals Agent, and he was also in the last war.

Mr. Hogan: You are affected by that question because it says any member of your household.

Mrs. Ballard: That's right.

Mr. Hogan: What was Mr. Ballard's office in the last war?

58 Mrs. Ballard: Captain in the Coast Artillery.

Mr. Hogan: Your husband was Mr. Breaux Ballard?

Mrs. Ballard: Yes—a Captain in the Coast Artillery.

Mr. Hogan: Now to all of you, do you now or have you ever received a pension, salary, bonus, soldier's or sailor's allotment benefit or remuneration in any form from the United States of America? That is, do you now or have you ever? The answer is the same for Mr. Allen that previously he received a captain's pay. And you, Mr. Edelen?

Mr. Edelen: I received a soldier's bonus.

Mr. Hogan: And you, Mr. Abell?

Mr. Abell: I received a soldier's bonus.

Mr. Hogan: To all of you that did not answer, I take it that your answer is no.

Mrs. Ballard: Doesn't that apply to the same thing? My husband received pay in the last war, and I suppose

a bonus—I don't know.

Mr. Hogan: Or do you? I will put it that way. The next question is do you receive, or have you ever received, a railroad retirement pension, allotment or payment?

I take it that your answer is no.

Do you now, or have you ever, received directly or indirectly from the United States any subsidy allowance, bonus or crop cut-out payments?

59 Mr. Abell: Yes, sir, I have.

Mr. Hogan: Mr. Abell, you have received a bonus?

Mr. Abell: Yes.

Mr. Hogan: Mr. Powers, from Meade County, you have received what?

Mr. Powers: Crop cut-out payment.

Mr. Hogan: Are you still receiving those?

Mr. Powers: Yes.

Mr. Hogan: Those payments are made to you by the United States government?

Mr. Powers: Yes.

Mr. Hogan: And now who else had an answer?

Mr. Edelen: I have.

Mr. Hogan: What do you receive?

Mr. Edelen: From the Triple A.

Mr. Hogan: Is that generally spoken of as a crop cut-out payment?

Mr. Edelen: Yes.

Mr. Hogan: Mr. Beavins, do you likewise receive such payment?

Mr. Beavins: Yes.

Mr. Hogan: And of course that payment is made directly to you by the United States of America?

Mr. Beavins: Yes.

Mr. Hogan: Mr. Abell, do you receive a crop cut-

60 out payment?

Mr. Abell: Yes, I do.

Mr. Hogan: Paid to you by the government of the United States?

Mr. Abell: Yes.

Mr. Hogan: Does anybody else have an answer to that question?

As to the rest of you not answering, I take it that your answer is no.

Are you now, or have you ever been, a member of any Board, Commission or Agency of the United States such as the Civil Service, War Manpower Commission, Transportation Commission, Rationing Boards, Labor Boards, Office of Price Administration, Selective Service, and Training Boards, sometimes known as Draft Boards, or any other board or commission? And if you are not on any of those boards, or have never been, is any member of your family or household now on such board or commission or have they ever been on such boards?

Mrs. Ballard: Yes, that is mine.

Mr. Hogan: That is your question?

Mrs. Ballard: Yes.

Mr. Hogan: Mrs. Ballard, is your husband on the draft board or rationing board?

Mrs. Ballard: I don't know.

61 Mr. Hogan: Does anybody else have an affirmative answer to that question?

I take it by your silence that you are answering in the negative.

Are you now, or have you ever been an office holder or appointee of the United States government or any of its agencies or boards?

Mr. Beavins: Yes.

Mr. Edelen: Yes.

Mr. Powers: Yes.

Mr. Hogan: Mr. Beavins, Mr. Edelen and Mr. Powers, do you have anything else to add to that except the fact that you are on the AAA?

Mr. Beavins: No.

Mr. Edelen: No.

Mr. Powers: No.

Mr. Hogan: Does any other member of the panel have an affirmative answer to make to that question?

I take it then by your silence that your answer is no.

Do you entertain any prejudice against one charged with a crime who interposes insanity as a defense? I may elaborate on the question just a little bit and ask you if

the fact that this defendant had interposed or may
62 interpose during the course of this trial a plea of insanity would that create in your mind a suspicion that that is a sham defense or an excuse to try to obtain his freedom and acquittal at your hands?

Now that is a very important question and I would like to have you deliberate a moment in your mind to find out from your own conscience whether you have any prejudice against this defendant or for that matter any defendant who interposes as a defense a plea of insanity at the time the crime which is alleged to have been committed and for that matter after that time and some time before the crime is alleged to have been committed.

I take it by your silence that your answer to that question individually and collectively is no.

Do you have or will you have any prejudice against this defendant interposing, if he does, a plea of insanity as a defense if it should likewise be shown that he has made a recovery and is restored to a sane condition?

I want you to be very deliberate about that, and frank, for that mattter, and tell me whether or not you believe that because one who has been insane and then is shown to have recovered, whether that fact will prejudice or influence your verdict in this case?

Now, Mr. Beavins, I am going to ask you separately if you have any prejudice on that assumption or on the
63 basis of the question I just asked you?

Mr. Beavins: No, I think if the doctor examined him or anything like that, I think the responsibility would lay on the doctor.

Mr. Hogan: Mr. Edelen?

Mr. Edelen: No, sir.

Mr. Hogan: I might make a little statement as to why I want that question answered. Sometimes I have heard it remarked that people just unscrupulously and without any real reason at all interpose a plea of insanity just to escape punishment. Now do any of you entertain such a belief generally and particularly as to this defendant, Thomas H. Robinson, Jr.?

Mrs. Tate, are you of that frame of mind?

Mrs. Tate: No.

Mr. Hogan: Are you?

Mrs. Greathouse: Yes.

Mr. Hogan: What is your name?

Mrs. Greathouse: Mrs. Ida Greathouse. I think what the gentleman said, if the doctor said that, it would be on him if I understand the question.

Mrs. Tate: That is what I mean, too.

Mr. Hogan: What did you say?

Mrs. Tate: If the physicians have found him to be insane.

64 Mr. Hogan: The question isn't whether physicians have found him to be insane or sane, but the question is whether you feel that a person who has been found to be insane or whether he has been found to be sane or not, if he interposes a plea of insanity whether or not that would create in your mind a suspicion that that is a fabrication or a sham defense in order to become liberated?

Mrs. Tate: If I understand the question, no.

Mr. Hogan: Mrs. Tate and Mrs. Greathouse, your answer is to that, no?

Mrs. Tate: Yes.

Mrs. Greathouse: Yes.

Mr. Hogan: Now as to you ladies, Mrs. Tate and Mrs. Greathouse, if it should thereafter be shown that this defendant, having been insane and after it should be shown, if it is, that he was insane at the time this crime in this indictment is alleged to have been committed, that he was restored to sanity, would you entertain any doubt that perhaps in the beginning he at no time was insane?

Mr. Brown: I don't follow that. I am lost on his question. The answer could be both yes and no.

Mr. Hogan: Will the Reporter read the question?

(At this point the last question above of Mr. Hogan was read.)

Mr. Brown: I think that question could be an-
65 swered yes, no, or maybe.

The Court: I think the question is somewhat involved. I think you should break it up so that the jury may give it more attention.

Mr. Hogan: I will ask the whole panel, to save time. If it should be shown that this defendant, prior to the time set out in this statement, and prior to the time of the crime, set out in the indictment, was alleged to have been committed, that the defendant, Thomas Henry Robinson, Jr., was insane, would that create in your mind any suspicion that he was using that as a sham or a cloak to hide behind the matters and things alleged in this indictment in order to obtain his acquittal.

Mr. Beavins: On his own testimony I would doubt it.

Mr. Hogan: Then you do have some doubt in your mind as to the genuineness of that plea of insanity, do you not, Mr. Beavins?

Mr. Beavins: Unless it was substantiated by a doctor.

Mr. Hogan: In other words, I take it that you generally are suspicious on the defense of insanity?

Mr. Beavins: Yes.

Mr. Hogan: Judge, I think that is cause for challenge.

The Court: Would you weigh all of the testimony
66 in the case, Mr. Beavins, and use your judgment as a juror, giving credibility to each witness that you thought it was entitled to and render a fair and impartial verdict from all of the evidence.

Mr. Beavins: Yes, sir.

The Court: I think a juror has the right to judge the credibility in a case so long as he doesn't say that that closes his mind to the other evidence in the case.

Mr. Hogan: If Your Honor please, the juror answers that he is suspicious of a plea of insanity. We don't want superstitious jurors in this case or in any other case.

The Court: Does that state of mind or opinion, Mr. Beavens, influence you in any way in giving a fair and impartial verdict in this case?

Mr. Beavin: No, sir. Not if the evidence there convinces me I am open to conviction.

Mr. Hogan: What is Your Honor's ruling on that?

The Court: Is there any ruling to be made? Have you challenged this juror?

Mr. Hogan: Let it be reserved. I will talk to the Court about that a little bit later after I finish my questions

about the challenges.

The Court: All right.

Mr. Hogan: Continuing that line of questioning about insanity, my question is directed to the whole 12
67 jurors now. If it should be shown that this defendant had been adjudicated insane by a court or courts of competent jurisdiction and had never been restored to sanity by any jurisdictional proceeding, and that presumably he was, at the time of the commission of the crime alleged in this indictment, and that later he was restored to a sane condition, would you entertain any suspicion or prejudice against him or against the defense of insanity at the time set out in the indictment?

Now think that question over, ladies and gentlemen.

Juror: Will you please repeat that?

The Court: I believe possibly the jury would get a better view if I should tell them this: As Mr. Hogan has indicated, there may be a plea of insanity or a defense of insanity imposed in this case, based upon many other things the fact that at the time of the commission of the alleged offense the man had been adjudicated insane.

When Robinson was arraigned here a few weeks ago, I asked him whether or not he was sane at the present time and he answered that he was.

Now that shows that at one previous time he was insane and at the present time he claims to be sane. Now with the question based upon that fact, does that create any suspicion or belief that he was not insane at the time of the alleged crime?

68 Mr. Hogan: I think, Your Honor, you should go a little bit further and say not only that he claims to be sane but that the Court has made his own inquiry into that fact—

The Court (Interrupting): That is a fact. The Court has appointed four doctors to examine him and they have reported to me that at the present time he is sane.

Mr. Hogan: I want the jury to understand that he was not claiming promiscuously insanity at one time and sanity at another time.

If the defense of insanity is shown, it will be shown

that he was at one time, or more than one time, judicially declared an insane person and despite the fact that he himself is declaring present sanity Your Honor has made his own inquiry into his present sanity at the hands of four psychiatrists or doctors of this community and they found him sane in accordance with the contention of the defendant that he is now sane.

So it is not really the defendant's own contention but it is a matter of court record that he is presently sane.

Now, with those premises before you, do you entertain any suspicious, prejudice or bias or doubt as to his guilt or innocence, or would you after hearing the evidence in this case and the law as given to you by His Honor?

I take it by your silence that you wouldn't and that you do not entertain any such prejudice or bias or
69 suspicion.

Is there any person related to you by ties of blood or marriage now serving in the military service in any of its branches? Now, Mrs. Davidson, we have your answer.

Mrs. Davidson: Yes.

Mr. Hogan: Mrs. Ballard, we will take you.

Mrs. Ballard: I have a son in the Navy—naval aviation. And I have a son-in-law in the Army.

Mr. Hogan: What is the name of your son-in-law?

Mrs. Ballard: John Pryor Castleman. I think he is a Captain.

Mr. Hogan: Now who are some of the others? I will take the ladies first. Mrs. Greathouse?

Mrs. Greathouse: I have a nephew—Phillip Noel.

Mr. Hogan: Is he in the active service?

Mrs. Greathouse: He is a captain—a doctor.

The Court: In the medical corps?

Mrs. Greathouse: In Louisiana, yes.

Mr. Hogan: Now, Mrs. Anderson?

Mrs. Anderson: I have a brother in the air corps.

Mr. Hogan: All right. Some other lady?

Mrs. Griggs: I have a nephew that I raised in San Francisco—he is a private, Charles Coomes.

Mr. Hogan: And what is your name?

Mrs. Griggs: My name is Griggs.

70 Mr. Hogan: Anybody else?

Mrs. Wilson: I have a son who is a Captain in the aviation.

Mr. Hogan: Name?

Mrs. Wilson: Charles Wilson. And I have a son-in-law who is a paratrooper.

Mr. Hogan: What is the name of your son-in-law?

Mrs. Wilson: Charles J. Snyder, Lieutenant.

Mr. Hogan: A paratrooper?

Mrs. Wilson: Yes, sir.

Mr. Hogan: Mr. Allen?

Mr. Allen: I have a first cousin in the Navy, on submarine duty.

Mr. Hogan: What is his name?

Mr. Allen: Edward H. Allen.

Mr. Hogan: Anybody else?

Mrs. Allen: I have a brother-in-law in the Navy.

Mr. Hogan: What is his name, Mr. Allen?

Mr. Allen: John P. Storks.

Mr. Hogan: All right. Mr. Edelen?

Mr. Edelen: I have a daughter and eight nephews in the service.

Mr. Hogan: What branch of the service is your daughter in?

71 Mr. Edelen: SPAR—Coast Guard.

Mr. Hogan: Anybody else?

Mr. Powers: I have a son in the Army.

Mr. Hogan: Mr. Beavin?

Mr. Beavin: I have a son in the air farce, and two brothers-in-law in the Army.

Mr. Hogan: Anybody else?

Mr. Beavin (Continuing): And a nephew in the air force.

Mr. Hogan: You Marion County people really supply the Army.

Mr. Beavin: Yes, and I have first and second cousins—I don't know how many there are of them.

Mr. Hogan: Mr. Abell?

Mr. Abell: I am in about the same predicament as Mr. Beavin. I have a lot of cousins whom I have not seen since

they were little tots—how many are in the service, I don't know. I have a nephew who is a Chief Petty Officer somewhere in the Pacific.

Mr. Hogan: You don't have any children or grandchildren in the service?

Mr. Abell: No.

Mr. Hogan: If you should, after hearing the evidence and the law as given by His Honor to you entertain a reasonable doubt, either as to the capacity of this defendant —I mean legal capacity by reason of his insane
72 condition—to commit any of the acts charged in the indictment or as to his guilt—now the question is, if you should entertain a reasonable doubt either as to his legal capacity to commit any of the acts charged or as to a reasonable doubt as to his guilt, would you resolve that doubt as to this defendant and acquit him? Now, that calls for an affirmative answer unless your answer is in the negative.

Mr. Beavin?

Mr. Beavin: Yes.

Mr. Hogan: Mr. Edelen?

Mr. Edelen: Yes.

Mr. Hogan: Mrs. Tate?

Mrs. Tate: Yes.

Mr. Hogan: Mrs. Anderson?

Mrs. Anderson: Yes.

Mr. Hogan: Mrs. Griggs?

Mrs. Griggs: Yes.

Mr. Hogan: Mrs. Wilson?

Mrs. Wilson: Yes.

Mr. Hogan: Mr. Powers?

Mr. Powers: Yes.

Mr. Hogan: Mr. Allen?

Mr. Allen: Yes.

Mr. Hogan: Mr. Abell.

Mr. Abell: Yes.

73 Mr. Hogan: Mrs. Ballard?

Mrs. Ballard: Yes.

Mr. Hogan: Mrs. Greathouse?

Mrs. Greathouse: Yes.

Mr. Hogan: Have you ever sat upon any jury in any court which either recommended or imposed the death penalty?

Mr. Beavin: I have.

Mr. Hogan: Anybody else?

Mr. Allen: Yes.

Mr. Hogan: The question is whether you have at any time, regardless of what time, ever sat upon a jury and either recommended the imposition of the death penalty or, as a member of a jury, voted for the death penalty?

Mr. Beavin: No.

Mr. Hogan: You say no now and a moment ago you said yes. Did you ever sit upon a jury that imposed the death penalty?

Mr. Beavin: No.

Mr. Hogan: A moment ago you answered yes?

Mr. Beavin: I thought you said had I ever sat upon a jury that asked for a death penalty.

Mr. Hogan: No. The question is, have you ever voted for the death penalty or recommended it to be given?

Mr. Allen: Would that be juries in criminal court?

Mr. Brown: He must be talking about Court Marshal Courts.

74 Mr. Hogan: I will ask you if at any time, either in civil court or a court martial, have you ever voted to give a man a death penalty?

Mr. Allen: I have in a Court martial.

Mr. Hogan: Was that death penalty imposed?

Mr. Allen: No sir, it was not.

Mr. Hogan: But you yourself, as one of the members of the Court martial, voted for the death penalty?

Mr. Allen: I did.

Mr. Hogan: Has anybody else of this panel or in this box ever voted to recommend or to impose—now I use those terms 'recommend' and 'impose' for this reason, as His Honor has already told you, in the Federal Court the jury does not impose the sentence. Ordinarily in a criminal case here the jury is confined to the proposition of whether they find the defendant guilty or not guilty. In the usual case in this Court, if there is a verdict of guilty

at the hands of a jury, the Court imposes the sentence, but in this case, as charged in this indictment, if certain facts or evidence should be produced, it will be within the prerogative of this jury to recommend to His Honor that the death penalty be imposed.

Now that the Court may follow your recommendation, or the Court has the right to disregard it. But in this case we are about to go to trial in, it may or may not be-
75 come your prerogative to recommend that the death penalty be imposed. So I ask you the question, whether or not you have ever sat upon any jury that either recommended or imposed the death penalty?

Now Mr. Allen has answered and Mr. Beavin has clarified his previous answer.

Has any other member ever sat upon such a jury that either recommended or imposed the death penalty?

I take it by your silence to that question that with the exception of Mr. Allen and Mr. Beavin that you have not.

Do you believe that simply because this defendant has been indicted that that is some evidence of his guilt? Or would the fact that this defendant has been indicted create in your mind a prejudice, bias or suspicion that he may be guilty?

In other words, ladies and gentlemen, do you believe that simply because there is an indictment returned that that is some evidence of guilt? Or do you think that unless the government (or the State for that matter) was wholly convinced or thoroughly convinced that the man was guilty that it would not have returned an indictment?

Do any of you entertain any such ideas as that? As His Honor has told you, an indictment is merely an accusation.

As you perhaps already know, the Grand Jury
76 returns usually an indictment upon evidence only from witnesses produced by the prosecution. The defendant in most cases usually does not appear in person, nor does the defendant or the accused person have any representative or witnesses before the Grand Jury. It is a one-sided affair, so to speak.

So now do you, with that knowledge of that procedure, believe that merely because the Grand Jury of this Court

has returned an indictment against the defendant, that that is some evidence of his guilt or that that creates or would create in your mind a suspicion, bias or prejudice?

I take it by your silence that your answer to those questions is no.

I will pass the jury to you, Mr. Brown.

Mr. Brown: If we are going to take a recess we might be able to do it now and I may consider this matter?

The Court: All right. Members of the Jury, I will ask you to go into the jury room in the custody of the Marshal during the recess. Do not discuss this matter among yourselves or with anyone, nor should any of the other members of the jury panel. Remain close by so the Marshal may get you in a few minutes.

At this point there was a short recess, after which the following proceedings were had:

77 Mr. Hogan: I would like for the Reporter to take this out of the hearing of the jury.

Out of the hearing of the jury the following proceeding was had in the presence of the Court, Mr. Hogan and Mr. Brown.

Mr. Hogan: The defendant, by his counsel, moves the Court to permit challenge for cause, directed to Mr. Allen, to be withdrawn, subject to be renewed if the defendant so desires after the government has exercised its challenges or willingness to accept the jury. In other words, I want to wait until the government has indicated its choice of the jury.

Mr. Brown: No.

The Court: You mean you want to renew it later?

Mr. Brown: You can always renew it.

Mr. Hogan: I think I made it prematurely. I don't have to make it until the government has indicated its choice.

The Court: Well, I don't know—

Mr. Hogan (Interrupting): I am sure of my position.

Mr. Brown: That's all right.

The Court: I am interested in getting the record clear as to whether or not there is any other challenge for cause at this time.

Now there was some question of being qualified as a housekeeper of some of the jurors. You have indicated
78 you might challenge Mr. Beavin but you have also indicated to me that you think there was no challenge in existence at that time?

Mr. Hogan: Suppose I reserve all my challenges either preemptorily or for cause until the government has exercised its challenges?

The Court: Well you may except for disqualification. If there is going to be any challenge for disqualification, I think the facts should be a little bit more fully stated.

Mr. Brown: What difference does it make whether they are housekeepers.

The Court: I think the fact that the statute says if they are not qualified does not disturb the verdict unless an exception is taken.

Mr. Hogan: That means that either side accepts the jury knowing of the disqualification, and that would not be grounds for reversal

The Court: That is what I am getting at. You know the facts about Mrs. Davidson and Mr. Beavin. Are you going ahead with them?

Mr. Hogan: No. I am going to ask some more questions.

The Court: All right.

Mr. Hogan: What is Your Honor's ruling on my motion?

79 The Court: On your challenge for cause, you may take those later, but as to the challenge for qualifications you will have to take those now. You can't require the government to go on until you have finished that.

Mr. Hogan: All right.

In the presence of the jury the following proceedings were had:

Mr. Hogan: Mrs. Davidson, I want to interrogate you a little bit further on your status as a housekeeper. It is not my purpose to humiliate you or embarrass you or to pry into your private life, but the statute requires the jurors to be a qualified housekeeper, and we are directing an inquiry into that status.

What is your father's business?

Mrs. Davidson: He is secretary of the Elks.

Mr. Hogan: Is that Mr. Chris Franz?

Mrs. Davidson: Yes.

Mr. Hogan: And your mother's maiden name was what?

Mrs. Davidson: Baumeister.

Mr. Hogan: Does she have a relative who is an attorney?

Mrs. Davidson: Yes, sir.

Mr. Hogan: He is now with one of the government agencies, I believe the OPA, or some such agency?

Mrs. Davidson: I believe he died.

80 The Court: Mr. William F. Baumeister was an attorney who died here several years ago.

Mr. Hogan: That was a tall gentleman?

Mrs. Davidson: I didn't know him.

Mr. Hogan: You did not know your Uncle?

Mrs. Davidson: No.

Mr. Hogan: He was a rather large man?

Mrs. Davidson: I think he is dead.

Mr. Hogan: That man that I refer to was an attorney who is dead. Now that was your Uncle?

Mrs. Davidson: No, he was not my Uncle. He would be about my third or fourth cousin.

Mr. Hogan: Who maintains the apartment or house where you stay?

Mrs. Davidson: My father pays all of the expenses and my mother has not been in good health, so I have been taking care of the house for her for the past ten years.

Mr. Hogan: You do not earn any salary or contribute toward any of the expenses?

Mrs. Davidson: No.

Mr. Hogan: And you just live there with your father and mother?

Mrs. Davidson: Well I have an income of my own through property.

Mr. Hogan: You have property in your own name?

81 Mrs. Davidson: Yes.

Mr. Hogan: But you do not reside or live in any of

the property in your name?

Mrs. Davidson: That is right.

Mr. Hogan: How long have you been living at your present address with your father and mother?

Mrs. Davidson: I have never lived anywhere else. The years when I was married we still lived at home. At this present address, I have been there fifteen years. That is, we have lived on Meadow Road fifteen years.

Mr. Hogan: Is there any other fact in connection with your family status that you would like to discuss?

Mrs. Davidson: Well I will answer anything you want to know. I have a son who lives there with me.

Mr. Hogan: You are not employed, I believe?

Mrs. Davidson: No, I am not employed. As I have said, I have an income of my own.

Mr. Hogan: But your father and mother look after the household expenses?

Mrs. Davidson: They look after the house.

Mr. Hogan: And pay all of the expenses?

Mrs. Davidson: Yes.

Mr. Hogan: Now, Mr. Beavin, your mother, I believe you stated, owns the farm where you reside?

Mr. Beavin: Right.

82 Mr. Hogan: Is she a widow?

Mr. Beavin: Yes.

Mr. Hogan: Do you have any children living there with you?

Mr. Beavin: Yes.

Mr. Hogan: How many?

Mr. Beavin: Five.

Mr. Hogan: Does your wife live there with you?

Mr. Beavin: Yes.

Mr. Hogan: Who contributes toward the household expenses?

Mr. Beavin: Well I pay my bills and she pays her bills.

Mr. Hogan: In other words, you pay your own separate household bills?

Mr. Beavin: Well we live in what you might call an apartment house. I run the farm and set my own table,

and pay my own expenses.

Mr. Hogan: Where is this property in which you live located? In the the country or at Lebanon?

Mr. Beavin: Five or six miles from Lebanon.

Mr. Hogan: Is that near St. Mary's?

Mr. Beavin: That is right.

Mr. Hogan: Is it a large dwelling house?

Mr. Beavin: I expect there are 14 or 15 rooms in it. It is an old colonial home.

83 Mr. Hogan: Is it separated into separate apartments?

Mr. Beavin: One.

Mr. Hogan: You and your family have the general run of the house, in other words?

Mr. Beavin: Well, we live on one side of the house and mother lives on the other.

Mr. Hogan: Well, do you have authority over the section of the house your mother lives in?

Mr. Beavin: No, sir.

Mr. Hogan: She does have some authority over the part that you live in because she owns it?

Mr. Beavin: That is right.

Mr. Hogan: Do you operate and see that the farm is tended?

Mr. Beavin: Yes, sir.

Mr. Hogan: Does she exercise some supervision or control over that?

Mr. Beavin: Well if I go to her for advice, she gives me advice.

Mr. Hogan: And you take it, of course?

Mr. Beavin: Yes.

Mr. Hogan: She is general manager and you are the operator of the farm. Is that right?

Mr. Beavin: I would hardly call it that way. If I want to do anything regardless of what it is, she okays it.

84 Mr. Hogan: You accede to her wishes, I guess?

Mr. Beavin: Yes, as a son does to his mother.

Mr. Hogan: You could not sell this farm or dwelling without her consent?

Mr. Beavin No, sir.

Mr. Hogan: And you, of course, wouldn't attempt to?

Mr. Beavin No, sir.

Mr. Hogan: Has any other fact in connection with your status as a housekeeper come to your mind that you would like to discuss?

Mr. Beavin: I am just like the lady up there, I can answer any question you want to ask. But the farm is handled as Mrs. Beavin and son—a partnership.

Mr. Hogan: But that refers to the farm?

Mr. Beavin: That is right.

Mr. Hogan: But we are speaking of where you live as to whether or not you are a housekeeper.

Mr. Beavin: I have to pay for the grocery bills, etc. I couldn't see why you wouldn't call me a housekeeper.

Mr. Hogan: You buy your own groceries?

Mr. Beavin: Yes.

Mr. Hogan: Who owns the furniture that you utilize?

Mr. Beavin: I do.

Mr. Hogan: But your mother does have her own furniture?

85 Mr. Beavin: Yes.

Mr. Hogan:: You maintain your family under the roof with your mother?

Mr. Beavin: Yes.

Mr. Hogan: But you pay your own living expenses, and she pays hers?

Mr. Beavin: Yes.

Mr. Hogan: How long have you lived at that place?

Mr. Beavin: All my life. I was born and raised there.

Mr. Hogan: Are you at liberty to go and come as you see fit and use the premises?

Mr. Beavin: That is right.

Mr. Hogan: I believe that is all.

Out of the presence or hearing of the jury, with Mr. Hogan, Mr. Brown and the Court in conference, the following proceeding occurred:

Mr. Hogan: I think Mr. Beavin is a housekeeper, but I don't think Mrs. Davidson is a housekeeper.

Mr. Brown: Yes, she is.

By the Court: There is no question about Mr. Beavin.

Mr. Hogan: No, but Mrs. Davidson doesn't buy a dime's worth on the expenses.

The Court: I will ask her.

86 In the presence of the jury the following proceedings were had:

The Court: Mrs. Davidson, I believe you say you have lived all your life—

Mrs. Davidson (Interrupting): Not in the same place. I have been living out there fifteen years.

The Court (Continuing): With your father and your mother?

Mrs. Davidson: Yes, sir.

The Court: Do you have one child now living with you?

Mrs. Davidson: Yes, sir.

The Court: Do you support that child?

Mrs. Davidson: Yes, sir.

The Court: Do you buy anything or contribute anything to the operation of that house?

Mrs. Davidson: Well I buy all of his and my clothes, and I pay my own expenses other than food. We have our own car. I just don't pay for the table.

The Court: Do you pay any of the expenses of the help or anything like that?

Mrs. Davidson: At times.

The Court: Do you pay any of the coal, heat or light bills?

Mrs. Davidson: No, I don't pay any of the house-
87 hold bills but I do the shopping and I do all of the buying.

The Court: You do the housekeeping for your mother?

Mrs. Davidson: Yes, sir.

The Court: Your mother is sick?

Mrs. Davidson: Yes, sir.

The Court: And you keep the house?

Mrs. Davidson: Yes, sir.

The Court: And arrange for the meals?

Mrs. Davidson: Yes. And I pay all of my own expenses.

The Court: The Court thinks both of jurors are qual-

ified.

Mr. Brown:: We accept the jury.

The Court: To the four jurors who have been previously excused for various reasons, Mr. Adams, Mr. Basham, Mr. Speed and Mr. Akerman, you will excused and go to the Clerk's office and get your certificate and to the Marshal's office and get your compensation for the time, and I might say that will go likewise for the jurors who are excused from the box by either side or by the Court.

The following took place out of the hearing of the Court:

Mr. Hogan: I want the record to show an exception to His Honor's ruling that Mrs. Davidson is a house-
88 keeper and a qualified juror.

Now, if Your Honor please, we do not want to offend any of these jurors by challenging any of them for cause. Is it all right for me come up here and challenge them out of the hearing of the jury?

The Court: Yes.

Mr. Hogan: I move the Court to challenge for cause Mr. Winthrop Allen and Mrs. Jane Ballard.

The Court: You haven't anything to advise the Court except what you brought out, their acquaintanceship with the people and certain activities?

Mr. Hogan: Certain acquaintanceship, but Mr. Allen is very actively and unusually engaged as a buyer and seller to the United States government.

The Court: He said that would not make any difference, didn't he?

Mr. Brown: Yes.

Mr. Hogan: I know he said that, but in the case of Hess' Administrator vs. L & N, 249 Ky. 624, which is a case in which an administrator called an administrator of an estate who owned stock in a railroad company—

The Court (Interrupting) The administrator himself was a juror?

Mr. Hogan: Yes. Now he did not own stock himself, but a member of his family owned stock and he was
89 appointed and qualified as administrator; and as ad-

ministrator of course that stock came into his hands and he controlled it as an asset of the estate. He was called as a juror and served in a case in which the L & N Railroad was a defendant. The plaintiff lost the case and appealed, and it was reversed on the idea that after the trial it was discovered that this administrator had in his control this stock, and they went thoroughly into that as to what influence that might have on his verdict, even though he was not the personal owner of that stock. The opinion held among other things that the parties must not only have a fair trial but they must at all times feel that they have a fair trial.

And in the case of Drury vs. Frank, 247 Ky 758; 57 SW (2) 984, was a case in which Commissioner Drury of the Kentucky Court of Appeals was involved in an automobile accident and as a result he sustained personal injuries. A jury gave a verdict and Mr. Drury complained that the verdict was entirely inadequate and out of proportion to the type and amount of his injuries that he had sustained.

In that case, by reason of the fact that Mr. Drury was himself a Commissioner of the Kentucky Court of Appeals, a special Court of Appeals was impaneled and decided the case on appeal. In that case there was some evidence
90 brought out that some juror, I believe, had been sued or had had some business relationship with one of the parties to the litigation. And it was held in that case that, like the Hess Administrator case, that the litigant must not only have a fair trial but that he must feel that he has had a fair trial, and that is a case where it is like where Caesar demanded that not only must his wife be virtuous but beyond suspicion.

In this case we don't want any suspicion that we cannot get a fair trial at the hands of a man who is tremendously interested by his business connection and association with a firm that does a large volume of business with the United States government.

The Court: I believe Mr. Brown you said that not even government employees are not excluded?

Mr. Brown: Yes, that's right.

The Court: Are there any rulings on that?

Mr. Brown: Yes. I can give them to you after the recess.

The Court: All right.

Mr. Hogan: Mr. Allen is more than an employee. He is a buyer.

Mr. Brown: He is an official.

Mr. Hogan: Yes, and he has connection with the government.

91 Mr. Hogan: Now, of course, we have elicited from Mrs. Ballard and Mr. Allen an acquaintanceship that means in the social and civic and musical contacts with the Stoll, Speed and the Sackett families. That is more than just a passing or speaking acquaintance. It is an acquaintance that is calculated to and no doubt will engender in the minds of those two jurors an unconscious prejudice and bias against this defendant and in favor of the members of the Stoll, Speed and Sackett families, despite their answers to the contrary.

The Court: I understand but what I had in mind was with respect to the other jurors that you indicated you might challenge for cause, you waive those challenges? There are only two you are challenging, Allen and Mrs. Ballard. I don't want there to be a mistake on the record that you have made a challenge heretofore that I have not passed on.

Mr. Hogan: No. I am trying to turn over in my mind whether I should ask for challenges for other than those two.

The Court: Now is your time to do it.

Mr. Hogan: Those two are the ones I specifically challenge.

The Court: Your challenges will be overruuled.

Mr. Hogan: Exception.

92 At this point the proceedings continued in the hearing of the jury as follows:

The Marshal: You whose names I call will vacate the box:

Mrs. Mildred Anderson

Mrs. Gertrude Griggs

Winthrop Allen
Mrs. Ida Greathouse
Mrs. Ballard
Mrs. Wilson
Mrs. Katherine Tate
That is seven—five remaining.

The Court: Now, those seven who were just excused, Mrs. Anderson, Mrs. Griggs, Mr. Allen, Mrs. Greathouse, Mrs. Ballard, Mrs. Wilson and Mrs. Tate, you are excused from further jury service at this trial. You will go to the Clerk's office for your certificate and then to the Marshal's office for your compensation.

It now comes to the time of adjournment for lunch, members of the Jury panel. I am going to ask the five of you who are in the box to have lunch with the Marshal at the Brown Hotel. Do not discuss this matter among yourselves or with anyone or allow anyone to discuss it in your presence. I will say that to the other members of the jury panel who have not yet been interrogated or put into
93 the jury box.

We will adjourn until 2 o'clock.

At this point Court adjourned until 2 o'clock, at which time the following proceedings were had:

The Court: Mrs. Davidson, before we go further let me ask you a few more questions.

Mrs. Davidson: All right.

The Court: How old is your son?

Mrs. Davidson: Seventeen.

The Court: What school does he go to?

Mrs. Davidson:: Male High.

The Court He is not employed in any way?

Mrs. Davidson: He is a senior there.

The Court: And what duties do you do at the house or the home?

Mrs. Davidson: Well I just keep house.

The Court: What does that include? Are there any servants there?

Mrs. Davidson: No.

The Court: Do you do the cleaning work?

Mrs. Davidson: Yes, just keeping house. I do the

cooking.

The Court: Do you do the cooking?

Mrs. Davidson: My mother and I.

94 The Court: I thought you said that your mother was incapacitated to some extent?

Mrs. Davidson: Not to where she can't get around, but I mean she had a bad operation here about 3 years ago and she, you know, cannot get around as ably as she could.

The Court: Do you have the management of the house?

Mrs. Davidson: Yes.

The Court: All right. Are there any further questions?

Mr. Brown: No.

Mr. Hogan: No further questions.

The Court: All right. Give us some more jurors.

The Marshsal: Elbert Sutcliffe
Orville Snider
John Day
Thompson Willett
Mrs. Martha Eastes
Mrs. Rose D. Strader
Mrs. J. M. Holmgren

The Court: Now, those of you who just took your seats in the jury box, you have heard my explanation to the other members of the panel the general nature of this case.

Are any one of you related by blood or marriage to the defendant?

95 Is there any one of you who outside of the usual reading of the newspapers who know anything about the facts of this case?

Did any of you take any part or have any connection with it in any way?

Mr. Day: I was in the detective office working on that case when it happened.

The Court: Here in Louisville?

Mr. Day: Yes, sir.

The Court: Did you work on the case?

Mr. Day: We made a run up there.

The Court: I expect you had better be excused.

The Marshal: Mr. Day will please vacate the box. Harold Miller.

The Court: Mr. Miller, do you understand what this case is about?

You have heard it explained?

Mr. Miller: Yes, sir.

The Court: Are you related in any way to the defendant?

Mr. Miller: No, sir.

The Court: Now do you, or any one of the other members of the panel know anything about this case or have any connection with it in any way other than a casual reading of the newspapers?

96 Have any one of you any formed or fixed opinion in this case in any way or the other from whatever reading or conversation you may have had?

Is there any reason why any one of you cannot sit on the jury in this case and render a fair and impartial verdict from the evidence and the law as given to you by the Court?

Mr. Miller: You asked about a fixed opinion?

The Court: Yes.

Mr. Miller: I have an opinion. I know about it from reading in the papers.

The Court: Well, by fixed opinion I mean an opinion which would not change upon considering fairly and impartially the law and the evidence which you hear in this case.

Mr. Miller: That would govern my decision.

The Court: We usually have an opinion about the things we read, but we have an open mind still. The question is are you willing to listen freely and fairly to the evidence and are you able to render a fair opinion in this case, irrespective of what your opinion may have been formerly?

Mr. Miller: Yes, sir.

Mr. Brown: Mr. Sutcliffe, could you under the law as given to you by the Court, and if the facts as testified
97 to from the witness stand justified it, would you be willing to vote for a death penalty for this defendant?

Mr. Sutcliffe: Yes, sir.

Mr. Brown: Mr. Snider, under the law as given by the Court, and if the facts as testified to from the witness stand justified it, would you be willing to vote for the imposition of the death penalty against this defendant?

Mr. Snider: Yes, sir.

Mr. Brown: Mr. Miller, under the law given to you by the Court, and if the facts as testified to from the witness stand justified it, could you recommend the death penalty against this defendant?

Mr. Miller: Yes, sir.

Mr. Brown: Mr. Willett, under the law as given to you by the Court, and if the facts as testified to from the witness stand justified it, could you recommend the death penalty for the defendant?

Mr. Willett: Yes, sir.

Mr. Brown: Mrs. Eastes, under the law as given to you by the Court, and if the facts as testified to from the witness stand justified it, could you recommend the death penalty for the defendant?

Mrs. Eastes: Yes, sir.

Mr. Brown: Mrs. Strader, under the law as given to you by the Court, and if the facts as testified to from
98 the witness stand justified it, could you recommend the death penalty against this defendant?

Mrs. Strader: I don't believe in capital punishment.

The Court: You mean, then, Mrs. Strader, that you would have difficulty in overcoming those scruples even if the facts and the law justified it?

Mrs. Strader: Judge Miller, I have never been favorable to capital punishment.

The Court: It is not a question of whether you have ever been favorable to capital punishment. We go further than that. Would it be against your conscientious scruples to do that?

Mrs. Strader: I couldn't say I would.

The Court: All right, you may be excused.

The Marshal: Mrs. Strader, vacate the box. Mr. J. Wallace Van Cleave.

The Court: Mr. Van Cleave, you heard me explain

this case to the other members of the jury?

Mr. Van Cleave: Yes, sir.

The Court: Are you related by blood or marriage to the defendant?

Mr. Van Cleave: No, sir.

The Court: Do you know anything about the facts in the case or have you had any connection with the case
99 in any way other than a casual reading of the newspapers that you have or may have read?

Mr. Van Cleave: No, sir.

The Court: Do you have a fixed opinion about this case in any way?

Mr. Van Cleave: No, sir.

The Court:: Do you have a free and open mind as to what the verdict should be upon the law and the evidence as presented in this case?

Mr. Van Cleave: Yes, sir.

The Court: Is there any reason why you could not sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Van Cleave: No.

Mr. Brown: Mr. Van Cleave, under the law as given to you by the Court, and if the facts as testified to from the witness stand justified it, could you vote for the imposition of the death penalty against this defendant?

Mr. Van Cleave: I could.

Mr. Brown: Mrs. Holmgren, under the law as given to you by the Court, and if the facts as testified to from the witness stand justified it, could you vote for the imposition of the death penalty against this defendant?

Mrs. Holmgren: Yes, I could.

Mr. Brown: I pass them to you.

100 Mr. Hogan: Mr. Sutcliffe, where do you live?

Mr. Sutcliffe: Harrods Creek.

Mr. Hogan: What is your middle name?

Mr. Sutcliffe: Geary.

Mr. Hogan: Does that name Geary have any particularly significance?

Mr. Sutcliffe: Do you mean is it a family name?

Mr. Hogan: Yes?

Mr. Sutcliffe: Geary, Indiana.

Mr. Hogan: I believe your grandfather was a steel manufacturer, was he not?

Mr. Sutcliffe: Yes, sir.

Mr. Hogan: What is your business?

Mr. Sutcliffe: Manufacturer.

Mr. Hogan: Where is it located?

Mr. Sutcliffe: 3008 Magazine.

Mr. Hogan: What do you manufacture?

Mr. Sutcliffe: Electrical equipment.

Mr. Hogan: How long—are you affiliated with any religious denomination?

Mr. Sutcliffe: Presbyterian.

Mr. Hogan: Are you an officer or a director of any bank in the city?

Mr. Sutcliffe: Yes, sir.

Mr. Hogan: Which one?

101 Mr. Sutcliffe: Director First National Bank.

Mr. Hogan: Would you classify yourself as a capitalist? In addition to being that of a manufacturer?

Mr. Sutcliffe: I would not.

Mr. Hogan Have you always been a resident of Louisville?

Mr. Sutcliffe: No, I lived in Chicago up until 9 years ago.

Mr. Hogan: Mr. Snider, where is your home?

Mr. Snider: Taylorsville, Kentucky—Spencer County.

Mr. Hogan: What is your business?

Mr. Snider: Farmer.

Mr. Hogan: Are you affiliated with any religious denomination?

Mr. Snider: I am a Baptist.

Mr. Hogan: Have you ever held any public office in Spencer County or in any other county?

Mr. Snider: No, sir.

Mr. Hogan: You have been a farmer all your life. Is that right?

Mr. Snider: Yes, sir.

Mr. Hogan: Mr. Miller, what is your business?

Mr. Miller: I am in the real estate business.

Mr. Hogan: Do you operate the Miller Finance Company?

Mr. Miller: Yes.

102 Mr. Hogan: And the Will B. Miller Company?

Mr. Miller That is right.

Mr. Hogan: And you were formerly a member of the Board of Aldermen in the City of Louisville?

Mr. Miller: I still am for two more days—until December 1st.

Mr. Hogan: Well I read where they had had their last meeting. Are you affiliated with any religious denomination?

Mr. Miller: Episcopalian.

Mr. Hogan: Where do you live?

Mr. Miller: 35 Hill Road—Castlewood.

Mr. Hogan: That is all for the present.

Now, Mr. Willett, you live around Bardstown?

Mr. Willett: I live in Bardstown.

Mr. Hogan: What is your business?

Mr. Willett: I am a distiller.

Mr. Hogan: What is the name of your distillery?

Mr. Willett: The Willett Distillery—I am president there.

Mr. Hogan: Are you affiliated with any religious denomination?

Mr. Willett: I am a Catholic.

Mr. Hogan: Do you have any other business?

Mr. Willett: Well, we have a 400-acre farm and we raise livestock and hogs and cattle and farm pretty
103 intensively for that acreage.

Mr. Hogan: When you say 'we' to whom do you refer?

Mr. Willett: My family—my father and my brothers of us who are at home, and the members of the family who are at home.

Mr. Hogan: Mrs. Eastes, where do you live?

Mrs. Eastes: 132 Carlisle Avenue—that is in Crescent Hill.

Mr. Hogan: Are you affiliated with any religious denomination?

Mrs. Eastes: Methodist.

Mr. Hogan: What is your husband's business?

Mrs. Eastes: For 15 years he was with the Kentucky Title Trust Company and First National Bank; and for the past six months he has been general accountant at the Mengel Aircraft Division, and on December 15th he takes his physical examination for the Army.

Mr. Hogan: You are about to lose him into the military service, I believe?

Mrs. Eastes: It looks that way.

Mr. Hogan: Mrs. Holmgren?

Mrs. Holmgren: Yes?

Mr. Hogan: Where do you live?

Mrs. Holmgren: Cherokee Parkway.

Mr. Hogan: With what religious denomination
104 are you affiliated?

Mrs. Holmgren: Baptist.

Mr. Hogan: What is your husband's business?

Mrs. Holmgren: He is a State Agent for the St. Paul Fire and Marine Insurance Company.

105 Mr. Hogan: Mr. Van Cleave, do you live on the Judge Churchill Humphrey property.

Mr. Van Cleve: No, I have moved from there.

Mr. Hogan: You formerly did live there?

Mr. Van Cleave: Yes, sir.

Mr. Hogan: What is your business?

Mr. Van Cleave: I am manager of Rhodes-Burford furniture store.

Mr. Hogan: I believe you are the manager of that, are you not?

Mr. Van Cleave: General manager.

Mr. Hogan: Where do you live now?

Mr. Van Cleave: Westport Road.

Mr. Hogan: You have always lived in Jefferson County, have you.

Mr. Van Cleave: No. I was born and raised in St. Louis.

Mr. Hogan: How long have you been around Louisville?

Mr. Van Cleave: Since January of 1938.

Mr. Hogan: I am addressing my remarks to you seven who have just been called into the box. Have any of you served upon a jury in this court or in the Jefferson Circuit Court within the past twelve months?

I take it by your silence that you have not.

By Juror: You mean prior to two weeks ago?

106 The Court: With the exception of service in this court since the first of October.

By Juror: No.

Mr. Hogan: Are any of you seven related by the ties of blood or marriage to Mrs. Alice Speed Stoll, William S. Stoll, Mrs. Virginia Speed, J. B. Speed, Mrs. Hattie Bishop Speed, or to any member of the Stoll, Sackett or Speed families?

Do any of you know Mr. Eli Brown who sits at counsel table?

Mr. Van Cleave: Yes, I know.

Mr. Hogan: Mr. Sutcliffe and Mr. Van Cleve. What is the nature and extent of that acquaintanceship, Mr. Van Cleave?

Mr. Van Cleave: I met him socially.

Mr. Hogan: Are you a member of any club or fraternity of which he is a member?

The Court: Just a minute, Mr. Hogan. I believe we overlooked that these seven members have not been sworn when they took the box.

The seven jurors were then duly sworn by the court.

The Court: I expect you better make the general statement to them, Mr. Hogan, about the previous questions.

Mr. Hogan: If I should repeat now the questions that I formerly asked you before you were sworn, would

107 your answers to those questions be the same?

Mr. Sutcliffe: With the exception that I have lived here two years longer.

Mr. Hogan: You previously reported you had been here about eight years, did you not?

Mr. Sutcliffe: Yes, sir.

Mr. Hogan: Now you have determined that it is ten years?

Mr. Sutcliffe: Eleven.

Mr. Hogan: Mr. Van Cleve, how do you know Mr. Brown socially?

Mr. Van Cleave: I just met Mr. Brown around at parties. I don't know him very well.

Mr. Hogan: You have had social contacts with Mr. and Mrs. Brown?

Mr. Van Cleave: Yes.

Mr. Hogan: On frequent occasions?

Mr. Van Cleave: No.

Mr. Hogan: Would the fact that you have had social contacts with him and his wife influence your decision in this case in which he is the prosecuting attorney?

Mr. Van Cleave: No.

Mr. Hogan: Mr. Sutcliffe, what is the nature and extent of your acquaintance with Mr. Brown?

Mr. Sutcliffe: I think my answer would be identi-
108 cal with Mr. Van Cleave's. I met him socially.

Mr. Hogan: Would that fact influence your verdict in this case in which he is prosecuting the case?

Mr. Van Cleave: No, sir.

Mr. Hogan: Are any of you acquainted with Mr. Dudley Inman who sits to the right of Mr. Brown?

Mr. Beavin: Yes, I have met the gentleman.

Mr. Hogan: Mr. Beavin, what is the extent and nature of that acquaintanceship?

Mr. Beavin: I have just known him that long.

Mr. Hogan: How long have you known him?

Mr. Beavin: I met him the last time I was on the Grand Jury. That's been three or four years ago.

Mr. Hogan: Grand Jury in this court?

Mr. Beavin: Yes, sir.

Mr. Hogan: Have you been called to Grand Jury service in this court on some occasions?

Mr. Beavin: Yes.

Mr. Hogan: How many times?

Mr. Beavin: Once.

Mr. Hogan: That was three years ago?

Mr. Beavin: Three or four years ago.

Mr. Hogan: Just the one occasion?

Mr. Beavin: Yes, sir.

Mr. Hogan: Now, you seven again—are you or
109 any member of your family or household a member, stockholder or director of any business firm or corporation which now does or has in the past done business with the United States or any of its branches, agencies, corporations, including any defense or war plant under control, lease, supervision or operated in furtherance of the war effort or home defense effort?

Mrs. Eastes: My husband is with Mengel Aircraft Division, and they are supervised by the Government. I don't guess they are now because the contract has been cancelled, but it is with the Government.

Mr. Hogan: Now he is—

Mrs. Eastes: (Interrupting): He is general accountant of the Mengel, Aircraft Division.

Mr. Hogan: He handles, in other words, all accounts of the Mengel Aircraft Division?

Mrs. Eastes: Just whatever a general accountant does. I don't know all he does.

Mr. Hogan: The Mengel Company does considerable business with the Government, does it not?

Mrs. Eastes: Well, the Aircraft Division is under the supervision of the Government, just like Curtiss-Wright or any other manufacturer that's producing something for the Army.

Mr. Hogan: In other words, your husband is
110 under the supervision of the Government then, is that correct?

Mrs. Eastes: Well, I would imagine so.

Mr. Hogan: Now, would that fact influence your decision in this case?

Mrs. Eastes: I don't think that has any connection with the case as far as I am concerned.

Mr. Hogan: That's what we want to determine, Mrs. Eastes, whether as to you it would have any bearing or influence.

Mrs. Eastes: No.

Mr. Hogan: Mr. Miller, you had your hand up.

Mr. Miller: My company builds defense housing under the War Production Board, under the Federal Housing

Commission.

Mr. Hogan: Is that group of houses on Phillip's Lane?

Mr. Miller: At the present time they are in Audubon Park.

Mr. Hogan: Mr. Willett?

Mr. Willett: We are, just as all the other distilleries, under contract with the Government to produce alcohol, and have been doing that exclusively for more than a year. Of course, the whole procedure is under the absolute control and supervision of the various bureaus and departments of the Government.

111 Mr. Hogan: So you, yourself, are under the supervision and control of the Government?

Mr. Willett: Completely. Of course, the distilling industry is always under the supervision of the Internal Revenue Department.

Mr. Hogan: That is as to revenue only.

Mr. Willett: Yes, sir.

Mr. Hogan: But now, since you are making alcohol for war purposes, that situation has changed and you are under the domination or supervision and control of the Government.

Mr. Willett: Yes. All of the distilleries are.

Mr. Hogan: Certainly yourself.

Mr. Willett: Yes, sir.

Mr. Hogan: And what office do you hold with that distillery?

Mr. Willett: I am the president, distiller and general manager.

Mr. Hogan: You are the distillery itself, in other words.

Mr. Willett: To a great extent, yes. It is a small company, but we mash three hundred barrels. Of course, we have other help, and do have other help. Two of my brothers who were with me before the war started are now pilots in the Army, so I am pretty busy.

112 Mr. Hogan: Mr. Sutcliffe, you had your hand up.

Mr. Sutcliffe: Yes. Our company has war contracts with both the Army and the Navy.

Mr. Hogan: What position do you hold with the com-

pany?

Mr. Sutcliffe: Vice President.

Mr. Hogan: What is the name of that company, again?

Mr. Sutcliffe: Louisville Electric Manufacturing Company.

Mr. Hogan: Do you sell your manufactured products direct to the Government?

Mr. Sutcliffe: We do in some instances and in some instances we are sub-contractors.

Mr. Hogan: Does the Government supervise the manufacturing of those articles which they purchase from you?

Mr. Sutcliffe: Only by inspection.

Mr. Hogan: Do they have a man stationed in your plant?

Mr. Sutcliffe: They do not.

Mr. Hogan: What do you mean, then, by inspection, Mr. Sutcliffe?

Mr. Sutcliffe: When the orders are ready for delivery, they are notified and they send inspectors to approve the final product.

Mr. Hogan: They then come into your plant and
113 inspect the finished product then.

Mr. Sutcliffe: Yes, sir.

Mr. Hogan: Mr. Willett, I believe you said you had two brothers in the service.

Mr. Willett: I have three brothers in service, two who were formerly associated with me in the operation of the distillery.

Mr. Hogan: Anybody else?

Mrs. Holmgren: I have a brother-in-law in the Army.

Mr. Hogan: We will probably come to that later. We are talking about any contracts or business relationships with the Government. Does your husband have any business relationship with the Government?

Mrs. Holmgren: No.

Mr. Hogan: Do you have any business with the Government?

Mrs. Holmgren: No.

Mr. Hogan: Anybody else of these seven have any

business relationship with the Government?

Mr. Sutcliffe: Pardon me—I have some relationship with the Triple A.

Mr. Hogan: You are a farmer also, Mr. Sutcliffe?

Mr. Sutcliffe: Yes, sir.

Mr. Hogan: Do you participate in the crop cut-out benefits?

114 Mr. Sutcliffe: I do.

Mr. Hogan: You receive from the Government pay as a subsidy or bonus, or whatever you choose to call it, for crops that you do not grow?

Mr. Sutcliffe: Following out the Government's program.

The Court: You are not a member of any AAA committee?

Mr. Sutcliffe: No, sir.

Mr. Hogan: How many acres do you have, Mr. Sutcliffe?

Mr. Sutcliffe: 430.

Mr. Hogan: Now Mr. Snider.

Mr. Snider: I am a farmer, and I, of course, receive a conservation check too.

Mr. Hogan: How many acres do you have?

Mr. Snider: 320.

Mr. Hogan: You get that check from the Government, of course.

Mr. Snider: Yes, sir.

Mr. Hogan: Mr. Miller, have you completed all of your construction or are you still doing business with the Government?

Mr. Miller: We are still doing business with the Government.

Mr. Hogan: How many houses do you have under

115 process of construction?

Mr. Miller: About fifty.

Mr. Hogan: Would you mind explaining in a general way just how that business tie-up with the Government exists with you?

Mr. Miller: Well, this is a defense housing project in which we agree to construct the houses and rent them

to people in defense work. In other words, they have to be rented to people in defense work. Then we receive priority from the War Production Board and they are financed through the Federal Housing Administration loan.

Mr. Hogan: Now, as to you seven again—are you acquainted with any member of the Speed, Sackett or Stoll families?

I will take Mrs. Eastes first.

Mrs. Eastes: I know Mrs. George Stoll and I know Miss Martha Jean, their daughter. We work together at Wesley Community House.

Mr. Hogan: And you work together with what member of the Stoll family at the Wesley Community House?

Mrs. Eastes: Martha Jean has done counsellor work out at Lake Louisvilla Camp. I am camp chairman of the House Committee so I have been in contact with her out at the Wesley Community Camp.

Mr. Hogan: Who is Martha Jean Stoll?

116 Mrs. Eastes: She is George Stoll's daughter, and the Stoll Oil Company have given us all the kerosene there that we use in our stoves for a number of years. I haven't had any contact other than just being given the oil. I don't know them, don't know the Stoll brother, but I know Martha Jean whose father is Mr. George Stoll.

Mr. Hogan: And Mr. George Stoll is an officer of the Stoll Company?

Mrs. Eastes: Yes, and they give us our kerosene that we use at camp.

Mr. Hogan: With what religious denomination are the Stolls affiliated?

Mrs. Eastes: Well, I think they are Methodists. I couldn't say for sure.

Mr. Hogan: You are a Methodist yourself?

Mrs. Eastes: Yes, sir.

Mr. Hogan: Do you attend the same church as any member of the Stoll family?

Mrs. Eastes: No; I attend the Crescent Hill Methodist Church, but they don't attend.

Mr. Hogan: Where is this Wesley House you speak of?

Mrs. Eastes: Wesley Community House is a settlement that the Methodist Church with the help of the Community chest runs, and it is at Shelby and Washington, and I am on the Board at Wesley House and so is Mrs.
117 George Stoll, and I am camp chairman and Martha Jean has been one of our counsellors at camp for three or four years.

Mr. Hogan: I take it from that connection then, Mrs. Eastes, you would be embarrassed by sitting on a jury in which members of the jury would be called upon to decide—

Mrs. Eastes (Interrupting): Well, I don't know them that well. I mean that I just know them. I had to look into all the counsellors at camp, their character and that sort of thing, who are counsellors to our girls. I don't know her other than just to speak to her. I mean, as far as that is concerned, I feel I could sit on a jury and take the evidence that is given in the case and judge from that, and what acquaintance I have with her would not have any effect on my verdict on the jury.

Mr. Hogan: All things being equal, would you hesitate to decide in favor of the defendant and against the Stoll family?

Mrs. Eastes: Certainly not, not if the evidence given on the stand was in his favor. My acquaintance with the Stolls would not have any effect on my verdict.

Mr. Hogan: You wouldn't let that affect your verdict?

Mrs. Eastes: We are not that close friends. I have just had the acquaintance I have told you about. I know Martha Jean to speak to, as I told you. Other than that, I don't know the Stolls.

118 Mr. Hogan: But you do know Mrs. George Stoll because she is on the Board of Directors.

Mrs. Hogan: Well, I know—I would know her if I would see her, of course, because we have been on the board together, but as far as being friends, I speak to a lot of people, I know them when I see them, but that's all.

Mr. Hogan: Now, Mr. Willett, did you have some answer to make to that?

Mr. Willett: I have a casual acquaintance with Mr.

Evarts Speed, Jr., who was here this morning and was excused from duty. I knew him from 1933 until 1936 when I had a position with the Bernheim Distilling Company, Louisville, sold us a good deal of building material at that time.

Mr. Hogan: Would that fact, Mr. Willett, influence your decision?

Mr. Willett: No, sir.

Mr. Hogan: Mr. Miller.

Mr. Miller: Your question is knowing the Stolls?

Mr. Hogan: That is correct.

Mr. Miller: Of course, I know all four of the Stoll boys.

Mr. Hogan: It is knowing the Stolls and the Speeds.

Mr. Miller: And I know Mr. and Mrs. Speed.

Mr. Hogan: You know them socially, civicly?

119 Mr. Miller: I have been in Mr. and Mrs. Speed's house to dinner, that is, Mr. and Mrs. Will Speed.

Mr. Hogan: The mother of Mrs. Alice Stoll?

Mr. Miller: Yes. I belong to two clubs that Mr. Berry Stoll belongs to.

Mr. Hogan: What are those?

Mr. Miller: Country clubs.

Mr. Hogan: You believe that you could sit on this jury, considering the fact that Mrs. Alice Stoll, the wife of Mr. Berry Stoll, will most likely be the chief complaining witness, and render a fair and impartial verdict, or would you be embarrassed to do so?

Mr. Miller: I could render a fair and impartial verdict.

Mr. Hogan: Considering that connection, socially and otherwise?

Mr. Miller: Yes.

Mr. Hogan: You hesitate to say that a little bit, Mr. Miller. I would like to see now just how you feel about that?

Mr. Miller: Well, I may be a little bit prejudiced at the present moment, but I am sure that I could treat the facts as they develop, as the trial proceeds.

Mr. Hogan: As it now stands, you are now prejudiced in favor of those families with which you have had

120 the social connections?

Mr. Miller: Well, not because of the social connections.

Mr. Hogan: But you do have a prejudice there.

Mr. Miller: Yes.

The Court: Is it a prejudice or an opinion, Mr. Miller?

Mr. Miller: It is an opinion, I would say, not—

Mr. Hogan (Interrupting): Well, it is an opinion that almost amounts to a prejudice, is it not, Mr. Miller?

Mr. Miller: I don't know a great deal about the facts, but I don't see how anybody that knew about it or knew anything about the case couldn't in their mind be prejudiced to a certain extent. I mean, the fact is not being denied that Mrs. Stoll was kidnaped.

The Court: Yes, every fact in the indictment is denied by the plea of "Not guilty."

Mr. Miller: That's a very evident fact even though it is denied.

Mr. Hogan: You believe that it is a fact.

Mr. Miller: I sure do.

Mr. Hogan: I believe he is not qualified, Judge.

The Court: All right, you may be excused.

Mr. Snider: You were asking about the Speed relation. There is a family of Speeds in our town that

121 I understand is related to these people, but I don't know that.

Mr. Hogan: You don't know any Speeds or any Stolls?

Mr. Snider: I know the Speeds in our town.

Mr. Hogan: I mean the Louisville Speeds.

Mr. Snider: No.

The Marshal: Mrs. Eugenia Matthews.

Mrs. Matthews was thereupon duly sworn by the Clerk.

The Court: Mrs. Matthews, you have heard me explain to the other members of the Jury panel what the case is about. Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mrs. Matthews: No, sir.

The Court: Other than what you may have casually read in the newspapers, do you know anything about the facts of this case or had any connection with the facts of

this case in any way?

Mrs. Matthews: Judge Miller, I listened to some of the evidence at the Robinson trial.

The Court: You mean the trial of Mrs. Frances Robinson and Thomas Henry Robinson, Sr.?

Mrs. Matthews: Yes.

The Court: I guess that would disqualify you. You may step down.

The Marshal: Mrs. Della Pruitt.

Mrs. Della Pruitt was then duly sworn by the Clerk.

122 The Court: You have heard me state to the members of the Jury panel what this case is about. Have you had any connection in any way with Thomas Henry Robinson, Jr. or with any member of his family?

Mrs. Pruitt: No.

The Court: Do you know him?

Mrs. Pruitt: No.

The Court: Do you know anything about the facts of this case other than what you may have read in the newspapers?

Mrs. Pruitt: No.

The Court: Now, do you have any fixed opinion in this case one way or the other as to guilt or innocence of this defendant?

Mrs. Pruitt: No.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mrs. Pruitt: No.

The Court: Mr. Brown.

Mr. Brown: Mrs. Pruitt, if the law as given to you by the Court and the facts as testified to from the witness-stand justify it, would you recommend a death penalty for this defendant?

Mrs. Pruitt: Yes.

Mr. Hogan: I believe you are a school teacher,

123 are you not?

Mrs. Pruitt: No, housewife.

Mr. Hogan: Housewife?

Mrs. Pruitt: Yes.

Mr. Hogan: What is the business of your husband?

Mrs. Pruitt: He is manager of the Beecher Terrace Project.

Mr. Hogan: That's on Jefferson near Fourteenth Street, is it not? Twelfth to Fourteenth on Jefferson?

Mrs. Pruitt: From Ninth to Thirteenth on Jefferson and Walnut.

Mr. Hogan: Who is your husband's employer? Who pays him?

Mrs. Pruitt: He is paid by the Louisville Housing Administration.

Mr. Hogan: Mr. Dosker?

Mrs. Pruitt: That's right.

Mr. Hogan: That's a Government project?

Mrs. Pruitt: That's right.

Mr. Hogan: Does that check come from the Treasurer of the United States?

Mrs. Pruitt: I couldn't say.

Mr. Hogan: But he is paid by the Government?

Mrs. Pruitt: Yes.

Mr. Hogan: Have you read any newspaper ac-
124 count of the matters alleged in this indictment?

Mrs. Pruitt: Yes, I have read what appeared in the paper November 21st.

Mr. Hogan: That is, in this magazine section here?

Mrs. Pruitt: That's right.

Mr. Hogan: That is, November 21st, 1943?

Mrs. Pruitt: Yes.

Mr. Hogan: Appearing in the Roto-Magazine Section of the Louisville Courier-Journal?

Mrs. Pruitt: Yes.

Mr. Hogan: Did you form any opinion as to the guilt or innocence of this defendant after you had read that?

Mrs. Pruitt: No.

Mr. Hogan: Have you heard anybody else express their opinion as to the guilt or innocence of this defendant?

Mrs. Pruitt: No.

Mr. Hogan: Have you any prejudice against this defendant?

Mrs. Pruitt: No.

Mr. Hogan: Have you ever been employed by any member of the Stoll or Speed families?

Mrs. Pruitt: No.

Mr. Hogan: Or the Sackett family?

Mrs. Pruitt: No.

Mr. Hogan: Do you know any members of those families?

125 Mrs. Pruitt: No.

Mr. Hogan: With what religious denomination are you affiliated?

Mrs. Pruitt: Catholic.

Mr. Hogan: I didn't understand you.

Mrs. Pruitt: Catholic.

Mr. Hogan: Have you always been a housewife or have you at some time or other been employed?

Mrs. Pruitt: I was employed fourteen or fifteen years ago, as a doctor's maid in a doctor's office.

Mr. Hogan: What doctor, may I ask?

Mrs. Pruitt: Dr. Johanboeke. There were twelve in the office.

Mr. Hogan: You say there were twelve in that same office. Just a few more, please.

Mrs. Pruitt: Dr. Henry—the late Dr. Henry Manly.

Mr. Hogan: One or two more.

Mrs. Pruitt: Dr. Pectol.

Mr. Hogan: Who else?

Mrs. Pruitt: The late Dr. Ogden.

Mr. Hogan: Who else, as long as you are going along?

Mrs. Pruitt: The late Dr. McDaniel.

Mr. Hogan: I think that's enough. Did any of those doctors ever treat or wait on any members of the

126 Speed or Stoll families?

Mrs. Pruitt: Not that I know of.

Mr. Hogan: Does there exist in you such a state of mind in regard to this case or to this defendant that you cannot try this case impartially and without prejudice to the substantial rights of this defendant?

Mrs. Pruitt: No.

Mr. Hogan: Have you heard any rumors about this case?

Mrs. Pruitt: No.

Mr. Hogan: Have you served upon a jury in the Jefferson Circuit Court or in this court within the past twelve months?

Mrs. Pruitt: No.

Mr. Hogan: Do you or your husband now, or have you ever received a bonus or salary, soldier or sailor's allotment, or benefit of any kind from the United States Government?

Mrs. Pruitt: No.

Mr. Hogan: Do you entertain in your mind any prejudice against one charged with a crime who interposes a plea of insanity as a defense?

Mrs. Pruitt: No.

Mr. Hogan: Would you have any prejudice in your mind, if it be shown that prior to the time mentioned
127 in the indictment that the defendant was insane but that later he was restored to his sanity?

Mrs. Pruitt: No.

Mr. Hogan: If you should, after hearing the evidence and the law, entertain a reasonable doubt either as to the legal capacity of this defendant to commit the acts charged in the indictment or any of them, or entertain a reasonable doubt as to his guilt, would you resolve that doubt in favor of the defendant and render a verdict of acquittal?

Mrs. Pruitt: Yes.

Mr. Hogan: Have you ever sat upon any jury or tribunal which either recommended or imposed the death penalty?

Mrs. Pruitt: No.

Mr. Hogan: Do you believe that because the defendant has been indicted that that is some evidence of his guilt or would the fact that he has been indicted create in your mind a suspicion, prejudice or bias that he may be guilty?

Mrs. Pruitt: No, sir.

Mr. Hogan: Now, going back to the six of you where I left off, I will continue with my further questioning—that is, Mrs. Eastes, Mr. Van Cleave, Mr. Sutcliffe, Mr. Snider, Mrs. Holmgren and Mr. Willett.

Are you now, or have you ever been, or any

128 member of your family or household been, employed by the Byrne & Speed Coal Company, the Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, or any business operated by the Speed, Sackett or Stoll families?

I take it by your silence that you have not.

Mr. Sutcliffe: Mr. Hogan, my hand was raised when you asked the question whether any of the jurors were acquainted with either the Speed or Stoll families. I don't know whether you saw my hand or not.

Mr. Hogan: I did not, Mr. Sutcliffe. You say that you do know some of the Speed, Stoll and Sackett families?

Mr. Sutcliffe: Yes, sir.

Mr. Hogan: What is the nature and extent of that acquaintance, Mr. Sutcliffe?

Mr. Sutcliffe: Friendly acquaintanceship without being intimate.

Mr. Hogan: Is it born of some social contact?

Mr. Sutcliffe: Yes.

Mr. Hogan: Would you mind telling the court what that is?

Mr. Sutcliffe: Meeting on occasions at social events or in the homes or clubs, exchanging dinner invitations.

Mr. Hogan: You have a rather close social contact with those families?

Mr. Sutcliffe: I wouldn't say that.

Mr. Hogan: Well, close enough that you have them in your home and they have you in their home?

Mr. Sutcliffe: No.

Mr. Hogan: You have been at gatherings, dinners and parties, at which members of the parties would be present?

Mr. Sutcliffe: Large gatherings.

Mr. Hogan: Would that have any influence on your decision in this case?

Mr. Sutcliffe: No.

Mr. Hogan: Do you think that you could sit upon this jury and after hearing the evidence render a fair and impartial verdict?

Mr. Sutcliffe: Yes, sir.

Mr. Van Cleave: My hand was also raised. I know Mr. Berry Stoll. I am a member of the Wynn Stay Club and he is also. We have lunch together very often.

Mr. Hogan: You say you have lunch there quite often?

Mr. Van Cleave: Yes.

Mr. Hogan: And Mr. Berry Stoll does likewise, I take it?

Mr. Van Cleave: Yes, one big table.

Mr. Hogan: You lunch at a round or long table?

Mr. Van Cleave: Yes.

Mr. Hogan: You have grown to like Mr. Stoll and
130 vice versa?

Mr. Van Cleave: Yes.

Mr. Hogan: I take it then, that you would have some hesitancy about finding a verdict of not guilty in this case in which his wife is to be the chief complaining witness?

Mr. Van Cleave: No, I don't think so.

Mr. Hogan: You don't think that that would influence your decision then?

Mr. Van Cleave: I don't know Mrs. Stoll at all. I was not in Louisville at the time this happened. I just met Mr. Stoll.

Mr. Hogan: But you do know her husband quite well?

Mr. Van Cleave: Yes.

Mr. Hogan: Now, that would have some influence on your decision?

Mr. Van Cleave: Possibly it would.

Mr. Hogan: And do you now have some prejudice in favor of him and his wife against this defendant?

Mr. Van Cleave: I just don't know enough about the case. I haven't read anything about it and I wasn't here when it happened.

Mr. Hogan: Has anybody ever talked to you about it?

Mr. Van Cleave: I heard a lot of gossip about it.

Mr. Hogan: Did you talk to those people that
131 were gossiping?

Mr. Van Cleave: No. Every story I heard about it was so entirely different that I don't know how—

Mr. Hogan: How did that information affect you, formulate in your mind some fixed opinion about this case?

Mr. Van Cleave: No. It was just another story. I don't know anything about it.

Mr. Hogan: Well, it made some impression upon your mind, did it not, Mr. Van Cleave?

Mr. Van Cleave: Well, so did the de Marigny trial.

Mr. Hogan: What trial was that?

Mr. Van Cleave: The trial they just got through in Nassau, the de Marigny trial. Just any trial that's news.

Mr. Hogan: With whom have you discussed this case?

Mr. Van Cleave: I don't know that I could even say. Ever since I have been in Louisville I have heard something about it.

Mr. Hogan: Did you discuss it at the Wynn Stay Club?

Mr. Van Cleave: No, I never heard it discussed there.

Mr. Hogan: Did you discuss it with Mr. Berry Stoll?

Mr. Van Cleave: No, sir.

Mr. Hogan: What is that?

Mr. Van Cleave: No, sir.

132 Mr. Hogan: Did you discuss it with any member of the Wynn Stay Club?

Mr. Van Cleave: No, I never heard anyone ever discuss it there.

Mr. Hogan: Did you discuss it with Mr. Brown, with whom you had social contact?

Mr. Van Cleave: No.

Mr. Hogan: With whom have you discussed it, Mr. Van Cleave?

Mr. Van Cleave: Well, various friends of mine. People I visit and know might have said something about it.

Mr. Hogan: Did they have a fixed opinion about this case?

Mr. Van Cleave: No. They just read the newspapers and told me. I wasn't here when it happened.

Mr. Hogan: They gave you some idea as to what their opinion was, did they not?

Mr. Van Cleave: Yes.

Mr. Hogan: And that made some impression upon you?

Mr. Van Cleave: Yes.

Mr. Hogan: And you now are sitting in the jury box with some idea about this case, are you not?

Mr. Van Cleave: No, just a great deal of curiosity.

Mr. Hogan: Well, apart from curiosity, you have a lot of information that has been conveyed to you
133 through gossip and information, have you not?

Mr. Van Cleave: I say I have no information of any kind, just gossip. Nobody ever said anything to me about it that knew anything about it.

Mr. Hogan: How do you distinguish between gossip and information?

Mr. Van Cleave: Well, gossip is somebody's idea of what it might be.

Mr. Hogan: Regardless of whether it is true or untrue.

Mr. Van Cleave: Yes.

Mr. Hogan: Your source of conversation has been generally and largely from gossip, is that correct?

Mr. Van Cleave: That's right.

Mr. Hogan: And, as you have stated a moment ago, has made some impression upon you.

Mr. Van Cleave: That's the only information I had of any kind.

Mr. Hogan: You said you didn't have information, that you had gossip. Now, do you have information or do you have gossip?

Mr. Van Cleave: Gossip.

Mr. Hogan: From the gossip that you have received, have you a fixed idea in your mind as to this case?

Mr. Van Cleave: No.

134 Mr. Hogan: You have some idea of your own about it, do you not?

Mr. Van Cleave: No, I don't have any idea.

Mr. Hogan: You hesitated when you answered. What is lurking in your mind? You wanted to speak out then. Now, I will ask you to be frank enough to tell me and tell the Court just what you have in your mind about this matter.

Mr. Van Cleave: Well, I don't know—as I say, I don't know anything at all about the case, I was not here when it was in the papers, I did not even see this article that you held up in the Sunday papers. All I have seen in print about it at all is the notice the other day that it was to be

today, a short article a few days ago about the setting of the trial. When I first came to Louisville I was introduced to Mr. Stoll. I joined the Wynn Stay Club, and every now and then somebody started talking about the Stoll case just like they were showing me around Louisville. I went to see Churchill Downs and various points of interest, and the Stoll case, I heard all the pros and cons and all the stories about it, and I have no idea of what actually happened.

Mr. Hogan: If you were to exchange places with the defendant and you were on trial for your life and liberty, and considering that you have the facts or gossip or information, whatever you term it, would you, Mr. Van
135 Cleave, turn the situation around, be willing to have Mr. Robinson in your place in the jury box, if you were on trial and in his shoes?

Mr. Van Cleave: If I were in Mr. Robinson's shoes I wouldn't want anyone on the jury that had any speaking acquaintance with Mr. Berry Stoll.

Mr. Hogan: Now, that's what we are getting at. Then, if you were in his shoes, you would feel like that one like yourself who had a speaking acquaintance, certainly a social acquaintance, with Mr. Berry Stoll, could not be an unprejudiced or certainly not a wholly unbiased juror, could he?

Mr. Van Cleave: You are asking me if I were Mr. Robison?

Mr. Hogan: Yes.

The Court: The question is directed to the juror, how he feels, not how somebody else feels.

Mr. Van Cleave: Well, I have no bias or prejudice in this case, but I do know Mr. Berry Stoll.

Mr. Hogan: Do you entertain some idea at the present time which would resolve itself in favor of Mr. Berry Stoll which would require some strong persuasion to get that leaning out of your mind?

Mr. Van Cleave: No, sir.

Mr. Hogan: Do you say that you come into this
136 jury box with an open mind as to this case?

Mr. Van Cleave: Yes.

Mr. Hogan: If, after receiving the evidence and having the law given to you by His Honor, you should then arrive at such a state of mind that you would be on the fence, more or less, as to which way to decide, the fact that you know Mr. Berry Stoll, would that fact influence your decision in favor of the prosecution?

Mr. Van Cleave: Well, I believe we are all instructed all things being equal the defendant gets the break, and I would so vote.

Mr. Hogan: Would you so vote?

Mr. Van Cleave: I would.

Mr. Hogan: And you would completely forget your relationship with Mr. Berry Stoll?

Mr. Van Cleave: Yes.

Mr. Hogan: Do you think you could completely dismiss—

Mr. Brown: Your Honor, he has been over that three or four times.

The Court: I think the inquiry has gone quite far. You are repeating a good deal. If there is anything you have overlooked, ask him, but let's don't go over it again and again. Mr. Van Cleave said two or three times he had an open mind in this case, he heard some stories but
137 he didn't know what was what, and he would vote according to the law and the evidence and the instructions. Now, any other additional facts you want to bring out, go ahead, but don't go back again over the same thing.

Mr. Hogan: I realize that, but this is such an important case from this defendant's standpoint, not only his liberty but his life is at stake, I have gone out of the ordinary—

The Court: I don't mind your asking questions, but let's don't ask any question more than two or three times.

Mr. Hogan: Now, to all six of you—are you employed, or have you been, or have any members of your family or household ever been employed or associated with any partnership, firm or corporation affiliated or associated with the Stoll Oil Refining Company, the Byrne & Speed Coal Company, the Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal

Company, the Pioneer Coal Company, the Frederick M. Sackett interests, or any other business or venture operated or controlled by the Stoll, Speed or Sackett families?

Have you now, or have you ever had, any business, civic, religious, charitable or social contacts with Mrs. Alice Speed Stoll, Mr. William S. Speed, Mrs. Virginia Speed, Mrs. Hattie Bishop Speed, or J. B. Speed, or
138 members of the Stoll, Speed or Sackett families? I believe Mr. Van Cleave, you answered, and I believe Mr. Sutcliffe has answered, and Mrs. Eastes, I believe you have answered. Do you wish to add anything to your formr statements?

Mrs. Eastes: Nothing. The only one I know is Martha Jean. I told you that.

Mr. Hogan: Now, as to the other three of you—Mrs. Holmgren?

Mrs. Holmgren: I know Mrs. Charles Stoll slightly, just have a speaking acquaintance.

Mr. Hogan: The question is whether you have had any civic, religious, charitable or social contacts with those families or members thereof.

Have you or any member of your famliy or household ever been employed at any of the filling stations of the Stoll Oil Company or in which they have any interests?

I take it by your silence to the questions that your answer is no, in each instance.

Are you or any member of your family or household a stockholder or bondholder or officer in the Stoll Oil Company, the Bryne & Speed Coal Company—

Mr. Brown: We have gone all over that, Your Honor.

Mr. Hogan: I don't believe I have asked about a stockholder or bondholder.

Mr. Brown: All right, I will withdraw the ob-
139 jection.

Mr. Hogan: (Continuing) The Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, the Fred M. Sackett interests, or any other business or venture operated or controlled by the Speed, Stoll or Sackett fami-

lies?

Are you six or seven housekeepers?

By Jurors: Yes.

Mr. Hogan: To the six of you—I believe Mr. Van Cleave has answered a lot of questions—does there exist in you such a state of mind in regard to this case or to this defendant that you cannot try this case impartially and without prejudice to the substantial rights of this defendant?

I take it that your answer is no, by your silence.

Have you read at any time in the newspapers or magazines an account of the commission of the crime with which the defendant is charged? Anybody else? Mr. Willett, Mrs. Snider, Mr. Sutcliffe, Mrs. Holmgren—you have not, Mrs. Eastes?

Mrs. Eastes: No. I wasn't here when the thing happened, and my husband has studied law and he said if I was on the panel I shouldn't read anything that was in the papers, so I have obeyed and I haven't.

Mr. Hogan: Do you always obey the instruction of your husband?

Mrs. Eastes: All legal advice, but I haven't read
140 anything since the case has come up this time and I was not in the city when it happened, I didn't know anything about it.

Mr. Hogan: To those who held your hand up indicating you had read account or accounts in the newspapers or magazines—do you believe, despite the fact that you may have read something in the newspapers and magazines, that you can render a fair and impartial verdict according to the law and the evidence? Does that go for you, Mr. Sutcliffe?

Mr. Sutcliffe: I feel it is my duty to.

Mr. Hogan: Mr. Snider?

Mr. Snider: Yes.

Mr. Hogan: Anybody else who might have read the newspapers? Mrs. Holmgren?

Mrs. Holmgren: Yes.

Mr. Hogan: Now, have any of you seven formed an opinion or impression based upon rumor or upon news-

paper or magazine statements about the truth of which you have expressed an opinion? All right, Mr. Sutcliffe.

Mr. Sutcliffe: I discussed it at home with my wife, of course, at the time.

Mr. Hogan: It is a question of whether or not you have formed an opinion or impression based upon rumor or newspaper statements. Mr. Snider.

Mr. Snider: From what I saw of the newspaper, if I knew those were facts in that paper, I would have an opinion.

141 Mr. Hogan: So, Mr. Snider, if what you have read in the newspaper or any part of it were brought out in this trial, you already have an opinion, do you not?

Mr. Snider: Yes, if I was sure, if they were facts. However, I have no way of knowing that is the truth of the matter from reading the paper, but from reading the paper I have an opinion; yes, sir.

Mr. Hogan: Your Honor, please, I don't want to ask him what his opinion is.

The Court: Can you disregard the facts that you have read in the newspaper accounts that you refer to and listen with a free and open mind, an impartial mind, from the facts as you get them from the testimony in this case, and decide the case on the facts from the witnesses, disregarding what you have read in the newspaper heretofore?

Mr. Snider: Sure I can.

Mr. Hogan: But, as matters now stand, you have some opinion in your mind as to the guilt or innocence of this defendant?

The Court: No. He said based on facts which he doesn't know whether they are true or not.

Mr. Snider: I said if that was the facts, if that was testified, I would probably have an opinion. I have got no way of telling what I see in the papers, whether that's facts or not.

142 Mr. Hogan: What I mean, you have already formed an opinion based upon statements in the newspapers.

Mr. Brown: He said he had not.

Mr. Snider: I said if the facts were true. I don't

know whether they are true or not.

Mr. Hogan: I will ask you this pointed question then, Mr. Snider, if the facts turn out to be true as you have read them in the newspaper, then you do have an opinion about the guilt or innocence of this defendant, do you not?

Mr. Brown: I am going to object to that because they are bound to have an opinion after the facts come in.

The Court: Not that he has an opinion now, but necessarily, after he hears the evidence, as a juror he would have an opinion. He has no way of knowing at the present time whether those facts are true or not.

Mr. Hogan: What opinion do you now entertain about this case, Mr. Snider?

The Court: If you have an opinion.

Mr. Snider: The only knowledge I have of the case at all is what I have seen in the papers, and I explained it to you. That's the only knowledge I have of the case, is what I have read in the paper.

Mr. Hogan: Without knowledge do you have an opinion, or do you have an opinion based on knowledge you have obtained from the newspapers?

143 Mr. Snider: I say, reading an article, I would have an opinion. I have an opinion if those things that I read in this paper were facts backed up by evidence and I knew it was genuine evidence like will be produced here I would have an opinion.

Mr. Hogan: In other words, you say you have to wait and see what the evidence turns out to be, is that it?

Mr. Snider: Yes.

Mr. Hogan: Are any of you six guardians, wards, attorney or client, master or servant, landlord or tenant, employer or employee on wages of a member of the family of Mrs. Alice Speed Stoll or the Speed, Stoll or Sackett families?

Have you ever complained against this defendant in any criminal prosecution or proceeding?

Did any of you six or seven serve on the Grand Jury which returned the indictment in this case?

Were you a member of a former jury sworn to try Thomas H. Robinson, Sr. and Frances Robinson, who were

jointly indicted in October, 1934?

Are you now, or have you been, or any member of your family or household been, stock or bond holders, office holders or directors of any of the United States Government corporations, associations or agencies, such as the Federal Land Bank, Federal Reserve Bank, the Re-
144 construction Finance Corporation, the AAA, or any of these other alphabetical subdivisions of the United States?

Are you or any member of your household now, or have you or they ever been, employed by the United States, directly or indirectly? Mr. Sutcliffe and Mr. Snider.

Mr. Willett: Will you repeat that question.

Mr. Hogan: Are you now, or have you ever been, or has any member of your family ever been, or are they now employed, directly or indirectly, by the United States Government? Of course, you are, being in the distillery business, Mr. Willett.

Mr. Willett: A brother of mine was a United States engineer for several years, too.

Mr. Hogan: Is he now in that service?

Mr. Willett: No.

Mr. Hogan: You had an answer on the back row.

Mrs. Pruitt: As I said, my husband is employed.

Mr. Hogan: He is employed at the Beecher Terrace?

Mrs. Pruitt: Yes.

Mr. Hogan: Mr. Snider.

Mr. Snider: Does that mean some member of the family that's in the armed services now?

Mr. Hogan: No, we are talking about employment for wages.

Mr. Snider: I have a nephew that's in the Alcohol
145 Tax Unit here on the fourth floor. Is that connected with the Government?

Mr. Hogan: It certainly is a distinct part of it. What is his name?

Mr. Snider: H. D. Snider.

Mr. Hogan: Mrs. Eastes?

Mrs. Eastes: I said before, my husband is with Mengel, but I think the Government pays the payroll. You asked

the same question.

Mr. Hogan: Your husband, you think, I believe, gets the check directly from the Government?

Mrs. Eastes: He doesn't get it directly from the Government, but they appropriate money for the war plants. The Mengel Company gives the check, but somebody gives Mengel the money.

Mr. Hogan: And you think that somebody is the Government.

Mrs. Eastes: Well, I am pretty sure it is. Indirectly they get it from the Government, I am pretty sure.

Mr. Hogan: Do any of you six or seven receive now, or have you ever received, a pension, salary, bonus, soldier or sailor allotment, benefit or remuneration in any form from the Government?

Mr. Snider: I receive a conservation check from the Government.

146 Mr. Hogan: Mr. Sutcliffe?

Mr. Sutcliffe: I do also, and I received a soldier bonus.

Mr. Hogan: Anybody else?

Mr. Van Cleave: Yes. I used to get a cut-out check.

Mr. Hogan: Are you the owner or operator of a farm, Mr. Van Cleave?

Mr. Van Cleave: I was part owner of a tract of land in Texas. We sold that.

Mr. Hogan: That's what is known as a conservation check or cut-out payment?

Mr. Van Cleave: I suppose so.

Mr. Hogan: Have any of you been, or are you now, a member of any board or commission of the United States, such as the Civil Service, the War Manpower Commission, Transportation Commission, Rationing Board, Labor Board, the Office of Price Administration, Draft Boards or OPA, or any other kind of boards?

Mr. Snider: I am on some kind of board over there, Rationing Board, don't get any pay.

Mr. Hogan: You don't get any pay?

Mr. Snider: No, sir.

Mr. Hogan: That's why you don't know much about

it, isn't it?

Do you seven now entertain any prejudice against
147 one charged with a crime who interposes a defense of insanity?

In other words, do you think that a person charged with a crime, when he interposes a plea of insanity, does so for the ostensible purpose of using that as a sham or cloak to hide behind the crime?

Do you have, or will you have, in this case, any prejudice against one interposing a plea of insanity as a defense who it is shown, and will be shown, thereafter made a recovery and is restored to sanity?

Have you, or any of you six or seven, formulated any opinion as to the guilt or innocence of this defendant?

Mr. Willett: I raised my hand sometime ago when you were speaking of opinion and prejudice. I think everybody presumed, until this new thing came up, that he was guilty, he was found guilty a number of years ago on charges substantially the same as he is meeting today.

The Court: He was not found guilty. He pleaded guilty.

Mr. Willett: He pled guilty then. Naturally, the case, I think, in the minds of most everybody who knew anything at all about it, or whoever heard about it, was that he was guilty.

Mr. Hogan: And you today think that?

Mr. Willett: I have no opinion except that he was found guilty, or pled guilty, rather.

148 Mr. Hogan: From that, as I take it, it naturally follows that you have an impression or opinion that he must have been guilty or he would not have pleaded guilty.

Mr. Willett: That's right. I dismissed it for a number of years, forgot all about the case entirely, except, you know how things flash in your mind. He was in prison, pled guilty, and I dismissed the matter with that thought.

Mr. Hogan: And you come here today, honestly so, admitting that you still have that same opinion about his guilt.

Mr. Willett: You can't get away from that, that is,

I can't get away from that, that he pled guilty a number of years ago. Of course, this is an entirely new trial.

Mr. Hogan: But you can't get away from that fact, that he pled guilty.

Mr. Willett: That's right.

Mr. Hogan: That made an indelible impression upon your mind.

Mr. Willett: That's correct.

Mr. Hogan: Judge, I think under those circumstances—

The Court: Mr. Willett, do you mean it made such an impression on your mind that it would enter into your consideration of the case?

Mr. Willett: If new facts come up, Judge, Your Honor, that prove that his position was wrong in pleading guilty.

149 The Court: Well, would that fact be an element in reaching your verdict even though there may be other facts, too?

Mr. Willett: I hardly think so.

The Court: Are you sure that it would not? In other words, you are to try this case, the jury is to try and hear this case, on the facts you get from this witness-stand in this case without consideration of anything that's happened heretofore, and unless you are sure that that fact can be entirely eliminated from your mind, will have no part to play at all in your consideration of this case, then you should not sit as a juror.

Mr. Willett: I will make every effort, I will say that.

The Court: That is not quite enough. You think you can or cannot?

Mr. Willett: I think I can. I can, I say.

Mr. Hogan: But you come into this box, Mr. Willett, laboring under an opinion that will have to be overcome in your mind.

Mr. Willett: Yes.

Mr. Hogan: Judge—

The Court: I don't know that you have put the case correctly to him. He says one way when he answers my questions, and then you get him to say another way

150 when he answers yours.

Mr. Hogan: Judge, I submit that what he means to say is that we would have to overcome in his mind the fixed idea that this man is guilty.

The Court: Is that your situation, Mr. Willett?

Mr. Willett: I want to answer both of you the same way, Judge, but I do say that I dismissed--I didn't take a great deal of interest in the case when it was previously tried, but I dismissed the matter with the thought that he pled guilty and was serving a sentence. Naturally, that thought is still in my mind.

The Court: The point I am trying to bring out is this, of course, people read the newspapers, they do get general impressions about things without knowing the full facts, what we are trying to reach in this case is a verdict on the evidence which we have here, disregarding entirely what has gone before. That case has been thrown out as not being a valid trial, a valid case. If it is going to take evidence to forget that opinion, in other words, if that's an element that's already in your mind and will be in your mind while you are considering this case, then you should not be a juror in this case. If, on the other hand, you can completely disregard that and say that was a former opinion I had but it plays no part in what the facts are now, it is nothing that I am starting with, I am start-
151 ing as an impartial juror with an open mind on it, then the situation is different. Do you follow me?

Mr. Willett: Yes, sir.

The Court: How do you feel about it?

Mr. Willett: I never condemned the man myself, and I wouldn't condemn him today.

The Court: I mean, can you completely and entirely disregard the previous actions of this man or what has taken place heretofore and approach this question with an open mind without any opinion one way or the other in the case?

Mr. Willett: Yes, sir.

The Court: Isn't that the test, Mr. Hogan?

Mr. Hogan: I don't believe it is.

The Court: You don't believe it is?

Mr. Hogan: No.

The Court: What do you believe is the test?

Mr. Hogan: I believe from what he said he has an indelible impression in his mind.

The Court: I think you told me you haven't, did you not?

Mr. Willett: Yes, sir.

Mr. Hogan: Mr. Willett, do you ascribe to the theory that this man is presumed to be not guilty until the contrary is shown?

Mr. Willett: I do.

152 Mr. Hogan: Will you follow that theory throughout this trial if you are selected upon this jury?

Mr. Willett: Yes, sir.

Mr. Hogan: If you knew that there were some legal and extenuating circumstances that led to a plea of guilty by this man and that a mistake had been made by the courts, would you resolve that in favor of this defendant on this trial?

Mr. Willett: Yes, sir.

Mr. Hogan: I would like for you to tell the Court just what effect the fact that the defendant pleaded guilty had upon your mind and has existed up until this time?

Mr. Willett: As I said before, I presumed that the matter was closed and it was a closed case, that Robinson was serving his term and had pled guilty, that was the end of it.

Mr. Hogan: And up until today or until this case was refreshed in your mind, you thought him to be guilty, did you not?

Mr. Willett: Yes, sir.

Mr. Hogan: Do you believe that because he was indicted, that that was of itself some evidence of his guilt?

Mr. Willett: No, sir.

Mr. Hogan: I might address that remark to the rest of the six or seven.

153 Mrs. Eastes: I didn't understand the question.

Mr. Hogan: The mere fact that the Court has returned—

The Court: The Grand Jury.

Mr. Hogan: (Continuing) —the Grand Jury has re-

turned an indictment against the defendant, does that create in your mind a suspicion or prejudice of guilt of the person indicted?

Back to Mr. Willett again—would it require an overwhelming amount of evidence upon the part of the defendant and his witnesses to overcome that idea of guilt that you formerly had fixed in your mind?

Mr. Willett: No. If I sit on this jury, he is innocent until he is proved guilty upon the evidence presented at this hearing.

Mr. Hogan: You would be willing, and you now say that you will forget any idea that you had about his guilt heretofore?

Mr. Willett: Yes.

Mr. Hogan: Have you or any of the six or seven of you, ever sat upon a jury in any court which either recommended or imposed the death penalty?

Mr. Snider: I haven't.

Mr. Hogan: What is your answer, Mr. Snider? Have not?

Mr. Snider: I have not.

154 Mr. Hogan: If, after hearing the evidence and the law as given to you, you should entertain a reasonable doubt either as to the capacity legally of this defendant to commit any of the acts charged in the indictment or a reasonable doubt as to his guilt, would you resolve that doubt in favor of this defendant and acquit him?

Would you six or seven resolve that doubt in favor of this defendant and acquit him?

Mr. Snider: We would have to give him the benefit of the doubt, wouldn't we?

Mr. Hogan: Would you do it?

Mr. Snider: I would.

Mr. Hogan: Would you, Mr. Sutcliffe?

Mr. Sutcliffe: Yes.

Mr. Hogan: Mrs. Eastes?

Mrs. Eastes: Yes, sir.

Mr. Hogan: Mr. Van Cleave?

Mr. Van Cleave: Yes, sir.

Mr. Hogan: Mrs. Holmgren?

Mrs. Holmgren: Yes, sir.
Mr. Hogan: Mrs. Pruitt?
Mrs. Pruitt: Yes, sir.
Mr. Hogan: Mr. Willett?
Mr. Willett: Yes, sir.

Mr. Hogan: Mr. Willett, if you knew the circum-
155 stances under which this defendant seven and a half or more years ago pleaded guilty and the fact that he had been previously adjudicated insane, and that the courts had found that he did not have capacity to either enter a plea of guilty or not guilty, and that he was not represented by counsel, would that tend to dismiss from your mind the fact that he had been allowed incorrectly by the Court to plead guilty?

Mr. Brown: I think that's purely argumentative. Mr. Willett has answered that question, I think, very definitely.

The Court: I think you have asked Mr. Willett quite fully and he has answered two or three times. I don't want to shut you off. He can answer this question, but don't go back and ask him over and over again.

Mr. Hogan: I don't think I had asked him anything about his being—

The Court: I think Mr. Willett has said several times that he can disregard everything which has happened heretofore, hear the case on the evidence that is introduced at this trial and give a verdict on that evidence alone. Haven't you said that, Mr. Willett?

Mr. Willett: Yes, Your Honor. I don't want to make an issue myself, but I want everybody concerned to know what is in my mind as well as I can explain it.

The Court: You are right. I think you should
156 ask the question in another way.

The Court: We will take a short recess. During this recess, do not discuss the matter among yourselves or talk about it with anyone.

At this point a short recess was taken, after which the following proceedings were heard:

Mr. Hogan: Mr. Brown, may I see you with the Judge, please?

(The following was heard out of the presence of the

Jury:)

Mr. Hogan: At this time and at this point, the defendant, by counsel, moves the Court to strike for cause the following: Mr. Albert G. Sutcliffe, Mr. Thompson Willett, Mrs. Martha Eastes, Mr. J. Wallace Van Cleave—because based upon the answers to questions propounded to them they clearly indicate that they have either formed a fixed opinion or prejudice against the defendant or because of business or relationship with the United States Government, or because of social contacts with members of the Stoll, Speed and Sackett families, they do not have a clear, open or unbiased mind and would be dominated and influenced to the prejudice of this defendant and his substantial rights.

(The hearing was resumed in the presence of the Jury, as follows:)

The Court: Recently, and with particular atten-
157 tion to Mr. Sutcliffe and Mr. Willett, as your cases are before me more in mind than the others, although the others may have some connection also—would the fact of your business connections with the Government as they now exist, the contracts with the Government or any supervision that the Government has, or any control that the Government has over the operation of your business, have any effect whatsoever on your verdict in this case, or could you reach a fair and impartial verdict with complete disregard of that business contact and business relationship? Mr. Sutcliffe, how do you feel about it?

Mr. Sutcliffe: It has no bearing on it.

Mr. Willett: I feel the same way as Mr. Sutcliffe.

The Court: Let the motions be overruled.

Mr. Hogan: Exception for the defense.

Mr. Brown: We will strike Mrs. Pruitt.

The Marshal: Mrs. Della Pruitt, vacate the box. Mr. Albert Sutcliffe, Mr. Orva Snider, Mrs. Martha Eastes, Mrs. Irvin Holmgren and Mr. Wallace Van Cleave, vacate the box, please.

The Court: Now, those of you who were just excused from the box, you are excused from further participation in this trial. You can call at the Clerk's office for your

certificate, then at the Marshal's office for your compensation. Mr. Marshal, give us six more jurors.

The Marshal: Mrs. James C. Young, Mose H.
158 Tatum, Mrs. Susan Arbegust, Clarence Kelly, Younger Rice, Herbert F. Bunton.

(The six above named jurors called by the Marshal were thereupon duly sworn by the Clerk.)

The Court: Now, those of you who have just been called to take the box, you heard me state to all the members of the jury panel the general nature of this case and what it was about. Anyone of you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Either of you know anything about the facts of this case other than what you might have acquired from a casual reading in the newspaper or had any connection with the case or participated in it in any way, or related to anyone who has had any connection with the case in any way?

Is there any reason why anyone of you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Does anyone of you have any fixed opinion in the case as to the guilt or innocence of the defendant?

Mr. Rice: Judge, I have, not from what I read, but someone undertook to tell me.

The Court: Is that opinion such that you do not feel it could be changed from a fair consideration of the evidence which you will hear in this case?

Mr. Rice: Well, it would take evidence to change it.

159 The Court: Is it an opinion that you have in the case when you start that would have to be overcome by the evidence?

Mr. Rice: Yes, sir.

The Court: Or could you disregard it as you enter the box and hear the case without regard for any such opinion?

Mr. Rice: Well, of course, if I hear evidence and the case was different from what I heard—

The Court: What I am trying to find out, is it a fixed opinion or do you approach this case with an open mind on it that you will decide the case on the evidence and the

facts regardless of what you have heard heretofore?

Mr. Rice: Yes, sir.

The Court: You do have an opinion?

Mr. Rice: Yes, sir.

The Court: All right, Mr. Brown.

Mr. Brown: Mr. Rice is in No. 1 place, Mrs. Arbegust No. 2, Mr. Tatum No. 3, Mr. Bunton No. 10, and Mr. Kelly No. 11. Mr. Rice, under the law given to you by the Court, and if the facts as testified to from the witness-stand justify it, would you recommend the death penalty in this case?

Mr. Rice: Yes, sir.

Mr. Brown: Mrs. Arbegust, under the law as given to you by the Court and from the facts as testified to
160 from the witness-stand justify it, would you recommend a death penalty in this case?

Mrs. Arbegust: I could not.

The Court: Mrs. Arbegust, do you have conscientious scruples against death penalties?

Mrs. Arbegust: Yes, I do.

The Court: You feel that you would not be able to give that matter your consideration?

Mrs. Arbegust: I wouldn't like to.

The Court: All right, you may be excused.

The Marshal: Carl P. Clore.

The Court: Remain standing, Mr. Clore, and raise your right hand, please.

(The above named juror was duly sworn by the Clerk.)

The Court: Mr. Clore, you heard me explain this case, what it is about, to the other members of the jury panel. Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Clore: No, sir.

The Court: Do you know anything about the facts of this case other than what you may have casually read in the newspaper from time to time?

Mr. Clore: No, sir.

The Court: Have you had any connection with the case in any way?

161 Mr. Clore: No, sir.

The Court: Or with anyone who has been involved in the case in any way?

Mr. Clore: No, sir.

The Court: Have you any opinion in the case?

Mr. Clore: No, sir.

The Court: Do you approach this case with an open mind?

Mr. Clore: Yes, sir.

The Court: Can you reach a verdict from the evidence which you hear from the stand during this trial?

Mr. Clore: Yes, sir.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Clore: I am not a housekeeper.

The Court: What is your situation?

Mr. Clore: I board.

The Court: You board where?

Mr. Clore: Crestwood.

The Court: You do not keep house at all?

Mr. Clore: No, sir.

The Court: Whom do you board with, anybody in your family or with strangers?

Mr. Clore: Just at the hotel.

162 The Court: I guess you had better be excused, Mr. Clore.

The Marshal: James M. Spalding.

(The above mentioned juror was duly sworn by the Clerk.)

The Court: Mr. Spalding, are you a housekeeper?

Mr. Spalding: Yes, sir.

The Court: You heard me state this case to the other members of the jury panel?

Mr. Spalding: Yes, sir.

The Court: You understand what it is about?

Mr. Spalding: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Spalding: I am not.

The Court: Do you know anything about the facts of

the case other than what you may have heard casually by reading of the newspaper?

Mr. Spalding: Nothing except what I read in the paper.

The Court: Has that given you any opinion in the case, one way or the other?

Mr. Spalding: Well, at the time of the case I had an opinion, I guess. I always do if I read anything, but that was several years ago, but I don't come here with
163 that opinion.

The Court: You haven't any opinion now?

Mr. Spalding: No.

The Court: You have an open mind as to hearing this case?

Mr. Spalding: Yes, sir.

The Court: You can reach a fair and impartial verdict from what the evidence is in this case without regard to what you may have read before or heard before?

Mr. Spalding: Yes, sir, I can.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict in the case in accordance with the law and evidence?

Mr. Spalding: No.

The Court: Mr. Brown.

Mr. Brown: Under the law as given to you by the Court, and if the facts as testified to from the witness-stand justify it, would you recommend the death penalty in the case?

Mr. Spalding: Yes, sir.

Mr. Brown: Mrs. Young, under the law given to you by the Court, and if the facts as testified to from the witness stand justify it, would you recommend a death penalty in this case?

Mrs. Young: Yes.

164 Mr. Brown: Mr. Bunton, under the law given to you by the Court and if the facts as testified to from the witness-stand justify it, would you recommend a death penalty in the case?

Mr. Bunton: Yes, sir.

Mr. Brown: Mr. Kelly, under the law as given to you by the Court, and if the facts as testified to from the wit-

ness-stand justify it, would you recommend a death penalty in this case?

Mr. Kelly: I think so.

Mr. Brown: I pass them to you.

Mr. Hogan: Mr. Rice, you live at Taylorsville, do you not?

Mr. Rice: Yes, sir.

Mr. Hogan: You live in that pretentious stone house on the hill, do you not?

Mr. Rice: Yes, sir.

Mr. Hogan: You have two sons, I believe.

Mr. Rice: Three.

Mr. Hogan: One of them was formerly, if not now, employed by the Health Department of the City of Louisville, was he not?

Mr. Rice: Yes, sir.

Mr. Hogan: With what religious denomination are you affiliated?

165 Mr. Rice: Baptist.

Mr. Hogan: And you are a farmer?

Mr. Rice: Yes, sir.

Mr. Hogan: Are you engaged in any other business?

Mr. Rice: None.

Mr. Hogan: Aren't you equipped to grade roads and dig ponds?

Mr. Rice: The boys have done that.

Mr. Hogan: That's the boys' business. You have no connection with that business?

Mr. Rice: No.

Mr. Hogan: What size farm do you have?

Mr. Rice: Well, we have four. I live on a farm of eighty-six. I have another one of sixty acres. Then we have a hundred and seventy-two acres and a hundred and twenty-seven.

Mr. Hogan: You have four hundred and forty-five acres in all, is that right?

Mr. Rice: Yes, sir.

Mr. Hogan: Now, the next gentleman to you on the rear there, what is your name, sir?

Mr. Spalding: J. M. Spalding.

Mr. Hogan: Mr. Spalding, where do you live?

Mr. Spalding: I live in Marion County.

Mr. Hogan: Do you live near Raywick, Kentucky?

166 Mr. Spalding: Four and a half miles from Raywick.

Mr. Hogan: Are you a married man?

Mr. Spalding: I am.

Mr. Hogan: Do you have a family?

Mr. Spalding: Yes, sir, I do.

Mr. Hogan: How many children?

Mr. Spalding: Four.

Mr. Hogan: Are they grown or married?

Mr. Spalding: One is married. My oldest son is married. The other three are not married. They are all grown.

Mr. Hogan: With what religious denomination are you affiliated?

Mr. Spalding: I am a Catholic.

Mr. Hogan: How far is Raywick from Lebanon?

Mr. Spalding: Eleven miles.

Mr. Hogan: Are you related to Judge Spalding, the County Judge of Lebanon?

Mr. Spalding: Well, it would be distant. Of course, as he ran for office, he thinks I am.

Mr. Hogan: You are a relative when he is seeking office, is that what you mean?

Mr. Spalding: Yes, sir. I think possibly we are a little kin, but not much.

Mr. Hogan: All right, sir. Now Mr. Tatum—Mr. Mose Tatum.

167 Mr. Tatum: Yes, sir.

Mr. Hogan: Where do you live?

Mr. Tatum: Marion County, five miles above Lebanon—East.

Mr. Hogan: East?

Mr. Tatum: Yes, sir.

Mr. Hogan: Out near Gravel Switch?

Mr. Tatum: Up in that neighborhood—not quite that far.

Mr. Hogan: Penicks?

Mr. Tatum: Just a little below Penicks (?) on the Barbourville Road.

Mr. Hogan: You live on the Barbourville Road, I believe.

Mr. Tatum: Yes, sir.

Mr. Hogan: What is your business?

Mr. Tatum: Farmer.

Mr. Hogan: What size farm do you have?

Mr. Tatum: Three hundred and fifteen acres.

Mr. Hogan: What church do you attend or are you affiliated with?

Mr. Tatum: Two or three different churches. I don't belong to any.

Mr. Hogan: Well, which ones do you usually attend?

Mr. Tatum: Methodist.

168 Mr. Hogan: Mr. Clarence Kelly.

Mr. Kelly: Yes, sir.

Mr. Hogan: Where do you live?

Mr. Kelly: I live about five miles West of Lebanon.

Mr. Hogan: Is that near Taylorsville?

Mr. Kelly: No, sir; West of Lebanon, near St. Mary's.

Mr. Hogan: St. Mary's?

Mr. Kelly: Yes, sir.

Mr. Hogan: Are you a farmer?

Mr. Kelly: Yes, sir, I am on a farm, but the farm is run by two boys of mine. I am the housekeeper.

Mr. Hogan: Are you acquainted with these other Marion County men on this jury?

Mr. Kelly: Yes, sir, I know them, most of them—all of them, I think.

Mr. Hogan: Is your relationship with them pleasant?

Mr. Kelly: Who?

Mr. Hogan: Is your relationship with those other Marion County men in the box pleasant?

Mr. Kelly: Yes, sir. Yes, sir.

Mr. Hogan: Always been that way, I take it.

Mr. Kelly: Yes, sir.

Mr. Hogan: With what religious denomination are you affiliated?

Mr. Kelly: I am a Catholic.

169 Mr. Hogan: Before your boys took over the management and operation of the farm, were you a farmer?

Mr. Kelly: Yes, sir.

Mr. Hogan: That's been your life endeavor?

Mr. Kelly: Always; yes, sir.

Mr. Hogan: Are you married?

Mr. Kelly: Well, my wife is dead.

Mr. Hogan: You are a widower?

Mr. Kelly: Yes, sir.

Mr. Hogan: What is your business, Mr. Bunton?

Mr. Bunton: In the seed business.

Mr. Hogan: Bunton Seed Company?

Mr. Bunton: Yes, sir.

Mr. Hogan: Where do you live?

Mr. Bunton: Anchorage.

Mr. Hogan: What church do you attend?

Mr. Bunton: I am a member of the Christian Church and attend the Presbyterian.

Mr. Hogan: I didn't understand.

Mr. Bunton: I am a member of the Christian Church and I attend the Presbyterian—gas rationing and location, and so forth.

Mr. Hogan: The Presbyterian Church nearer than your Christian Church out there?

Mr. Bunton: That's right.

170 Mr. Hogan: Mrs. Young, where do you reside?

Mrs. Young: 211 Crescent Court.

Mr. Hogan: And what is your husband's name?

Mrs. Young: Fred B. Young.

Mr. Hogan: What is his business?

Mrs. Young: Real estate.

Mr. Hogan: What church do you attend regularly, Mrs. Young?

Mrs. Young: The Methodist.

Mr. Hogan: Are you a member of the Crescent Hill Methodist Church?

Mrs. Young: Crescent Hill Methodist Church.

Mr. Hogan: Where is that church located?

Mrs. Young: On Peterson Avenue.

Mr. Hogan: Now, you who have been freshly brought into the box—have any of you served upon a jury in this court or on any circuit court within the past twelve months, not counting this term of service?

171 Mr. Hogan: Have you, Mr. Rice?

Mr. Rice: No.

Mr. Hogan: Have you, Mrs. Young?

Mrs. Young: No.

Mr. Hogan: Have you Mr. Kelley?

Mr. Kelley: No, sir.

Mr. Hogan: Are any of you acquainted with any member of the Speed or Stoll or Sackett families?

Mr. Bunton: I am.

Mr. Hogan: Mr. Bunton?

Mr. Bunton: I know Mr. Charles Stoll.

Mr. Hogan: What is the nature of that acquaintanceship?

Mr. Bunton: Two or three years ago Charles Stoll was a member of the Optimist Club, of which I am now a member.

Mr. Hogan: Do you frequently attend meetings of the Optimist Club?

Mr. Bunton: I do, yes, sir. Mr. Stoll isn't a member now. He hasn't been for 2 or 3 years now.

Mr. Hogan: Do any of you other members of the jury who have just been drawn into the box know any member of the Stoll family?

Do any of you know any member of the Speed family?

Do you know any member of the Fred Sackett family?

Or Mrs. Hattie Bishop Speed, do you know her?

172 Do you have any social contacts with the Speed, Sackett or Stoll families?

Do you have any religious contacts or civic contacts? You have already answered, Mr. Bunton.

Do any of you have any fraternal contacts—or any contacts of any nature with any member of those three families or their wives?

Are any of you now, or have you been, or has any member of your family or household ever been an employee of the Stoll, Speed or Sackett families, or of any business,

corporation or association in which they were interested?

Mr. Spalding: In 1939 my son worked for the Stoll Oil Company for one month. He had made application to the L. & N. for a job and they told him that they would give him a job within a month; and he went to work for the Stoll people but he told them that he would go with the L. & N. people when he was called; and he did and he had worked there about a month but I don't know who he worked for in that company.

Mr. Hogan: But his position terminated satisfactorily with them?

Mr. Spalding: Yes; and he told them when he went there that he would leave if the L. & N. called him.

Mr. Hogan: Are any of you now, or have you at any time ever been, or any member of your household or
173 any member of your family been an officer, stockholder or director in any company in which the Stoll, Speed or Sackett families had any interest?

I take it by your silence that you have not been any such stockholder or officer.

Are any of you related by the ties of blood or marriage to any members of the Stoll, Speed or Sackett families, or related by ties of blood or marriage to any of the wives of the Stoll, Speed or Sackett families?

Do any of you know, or did you have any social contacts with Mr. Eli Brown who sits at the table?

Do any of you know, or have you had any social, religious, civic or contacts of any kind with Mr. Brown or with Mr. Dudley Inman who sits at the counsel table?

Has anybody ever discussed this case with you?

Mr. Rice: Yes.

Mr. Hogan: Mr. Rice, will you elaborate and tell us about that?

Mr. Rice: Well it has not been so many months ago since a traveling man was telling me something about it. It was news to me, you know. Of course I had sort of forgotten about the case. He claimed that he knew the details of it. My opinion is just what he said.

Mr. Hogan: Did he convey to you what purported to be the details of this case?

174 Mr. Rice: Yes, sir.

Mr. Hogan: From those details as related to you did you form an opinion about this case?

Mr. Rice: Yes.

Mr. Hogan: Do you have a fixed opinion now as to the guilt or innocence of this defendant?

Mr. Rice: Yes I have.

Mr. Hogan: Does any other member of this jury in the box who has just been called have any opinion, any fixed opinion of the guilt or innocence of this defendant?

I take it by your silence that you have no such opinion.

Are each of you bonafide housekeepers?

Mrs. Davidson: Do you consider me one?

Mr. Hogan: I am referring now to those just brought in. We have been over your housekeeping status. Unless I otherwise indicate, my questions will be addressed to those who have just been put in the box.

Does there exist in you such a state of mind in regard to this case, or to this defendant, that you cannot try this case impartially or without prejudice to the substantial rights of this defendant?

I take it by your silence that you have no such state of mind that prevents your rendering a fair and impartial verdict.

175 Mr. Hogan: Now Mr. Rice I am coming back to you, and that question and your silence does not apply as I have understood you have said that you have a fixed opinion about this case. Does that opinion, that fixed opinion, disqualify you from rendering a fair and impartial verdict in this case one way or the other?

Mr. Rice: Well it would take evidence to change my opinion.

Mr. Hogan: Judge, I don't believe Mr. Rice is really qualified or at all qualified to sit upon this case from his answers.

The Court: Well, just go ahead with the rest of the examination.

Mr. Hogan: Yes, sir.

Have any of you read at any time in the newspapers or magazines an account of the commission of this crime

charged in the indictment?

Mrs. Young: I read the newspapers, and I also read the roto section.

Mr. Hogan: You have read this roto section that has been exhibited here today?

Mrs. Young: Yes.

Mr. Hogan: Referring to the November 21, 1943 roto section of the Courier-Journal?

Mrs. Young: Yes, sir.

Mr. Hogan: Now, after you read that roto section and after you read the newspapers, did you form an opinion or impression based upon those or upon rumor that would prevent your rendering a fair and impartial verdict in this case?

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Mrs. Young: No it did not.

Mr. Hogan: Mr. Bunton, did you read the newspapers?

Mr. Bunton: I read that article in the roto section there.

Mr. Hogan: Did you, after reading that article, or any other newspaper article, form in your mind an impression or opinion that would prevent your rendering a fair and impartial verdict?

Mr. Bunton: No, sir.

Mr. Hogan: Are any of you guardian or ward, or attorney or client, master or servant, landlord or tenant, employer or employee of any member of the Stoll, Speed or Sackett families?

Your silence indicates a negative answer, I take it.

Have you ever complained against the defendant in any criminal prosecution or proceeding?

Did you serve on the Grand Jury which returned the indictment in this case?

Were you a member of a former jury sworn to try Thomas H. Robinson, Sr. and Mrs. Frances Robinson, who were jointly indicted with this defendant?

Are you now, or have you ever been, or has any member of your family or household been, stockholders or bondholders, office holders or directors of any of the United States government corporations, associations or agencies such as the Federal Land Bank, the Federal

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Reserve Bank, the Reconstruction Finance Corporation, or the AAA, and like alphabetical subdivisions?

Are you now or has any member of your family ever been employed directly or indirectly by the United States?

I take it that your silence indicates a negative answer.

Do you now receive, or have you ever received a pension, salary, bonus, soldier's or sailor's allotment or benefit or remuneration of any kind from the government?

Mr. Tatum: I receive a bonus on this AAA.

Mr. Hogan: That is what is called a conservation or cut-out check?

Mr. Tatum: Yes.

Mr. Hogan: You signed up to receive those benefits and abided by the rules and regulations of the AAA?

Mr. Tatum: Yes.

Mr. Spalding: I have too.

Mr. Hogan: Did any of you just called to the box receive or have you ever received a railroad retirement pension or allotment or payment?

178 Are you now or have you been at any time, or has any member of your family been on any Board or Commission or Agency of the United States, such as the Civil Service Commission or a member of the War Manpower Commission, or Labor Board, or Office of Price Administration, or on any rationing board or draft board?

I take it by your silence that your answer is no.

Are you now or have you ever been or has any member of your family ever been an office holder or appointee of the United States government?

Do any of you sell directly or indirectly to the government or have any business dealings with the United States government?

Mr. Bunton: I have.

Mr. Hogan: What is the nature and extent of your business relationship with the government?

Mr. Bunton: Emergency supplies of seeds, power lawnmowers and possibly fertilizers.

Mr. Hogan: Would the fact that you have such relationship with the government influence your verdict, or help you to form any opinion about this case?

Mr. Bunton: None whatsoever.

Mr. Hogan: Could you sit upon the jury and after hearing the evidence, fairly and impartially make up your own mind not influenced by any outside business con-
179 nections with the government?

Mr. Bunton: Yes, I could.

Mr. Hogan: To those who have just been put into the box, do you or any of you entertain any prejudice against one charged with a crime who interposes insanity as a defense? In other words, are you of the opinion or belief that because one charged with a crime interposes a plea of insanity that that is done for the purpose of affecting a release and obtaining an acquittal?

Do you have or will you have any prejudice against one imposing a plea of insanity as a defense when it is shown that after the time of the alleged crime there has been a restoration and a recovery of this insanity?

Have you formulated any opinion whatsoever as to the guilt or innocence of this defendant?

Now, Mr. Rice, you have answered. I am now addressing my remarks to the others who have just been put into the box.

Mr. Spalding, have you?

Mr. Spalding: As I have said before, I read the newspapers and I followed the case closely 8 or 9 years ago. I might have had an opinion then but if I did I am of an open mind now, and I do not remember about it.

Mr. Hogan: Would you say then whatever opinion you formed was a fixed opinion?

180 Mr. Spalding: No, it was not a fixed opinion.

Mr. Hogan: Because you don't have it at this time. Is that what you mean to convey?

Mr. Spalding: That is right.

Mr. Hogan: Mr. Tatum, have you formed an opinion?

Mr. Tatum: No, sir, I have not.

Mr. Hogan: Are you open-minded about this matter?

Mr. Tatum: I am.

Mr. Hogan: Mrs. Young?

Mrs. Young: I do not have a fixed opinion.

Mr. Hogan: Well, do you have an opinion?

Mrs. Young: Yes, at the time I read it I thought I had an opinion, but I do not know that I had a fixed opinion.

Mr. Hogan: Well do you come into this jury box with that opinion, whether it is fixed or unfixed?

Mrs. Young: No, I would not say that I had an opinion at all.

Mr. Hogan: You are willing to be guided by the law and the evidence as you hear it and as will be given to you by His Honor. Is that what you mean to say?

Mrs. Young: Yes.

Mr. Hogan: Is any person related to you by ties of blood or marriage now serving in the military service?

Mr. Bunton: I have a brother who is a Lieutenant.
181 He was in the field artillery but I don't know what division he is in now. It is a new branch overseas. At this time I am a volunteer member of the Coast Guard Reserve without pay.

Mr. Hogan: Is that the outfit Jim Stewart and some others are with?

Mr. Bunton: That is right—we battle the Ohio.

Mr. Hogan: Mr. Kelley?

Mr. Kelley: I have a son in the Army.

Mr. Hogan: Is he an officer or non-commissioned officer or anything?

Mr. Kelley: He is in the Medical Corps.

Mr. Hogan: Mr. Spalding?

Mr. Spalding: I have a son in the Army.

Mr. Hogan: Is he an officer or a non-commissioned officer or anything?

Mr. Spalding: He is in the Infantry—a sergeant.

Mr. Hogan: Mr. Rice?

Mr. Rice: I have a son-in-law and a nephew.

Mr. Hogan: If you should, after hearing the evidence and the law as given to you by His Honor, entertain a reasonable doubt either as to the legal capacity of this defendant, by reason of the—of an insane mental condition, to commit any of the acts charged in the indictment or as to his guilt, would you resolve that doubt in favor of
182 this defendant and acquit him? Would you, Mrs.

Young?

Mrs. Young: Yes, I would.

Mr. Hogan: Mr. Bunton?

Mr. Buntin: Yes, sir.

Mr. Hogan: Would you do that, Mr. Kelley?

Mr. Kelley: I think so.

Mr. Hogan: Would you come flat-footedly out and say yes that you would?

Mr. Kelley: No, I wouldn't say that flat-footedly.

Mr. Hogan: Well, would you resolve a doubt as to his guilt or as to his insane legal mental condition to be guilty of the crime charged in favor of this defendant and acquit him?

Mr. Kelley: I think not.

Mr. Hogan: Mr. Rice, would you do that?

Mr. Kelley: I do not understand the question.

(At this point the question above was read.)

Mr. Hogan: Let me put the question to you separately. If, after hearing the law and the evidence you should entertain a doubt as to his mental capacity to commit a crime, would you resolve that doubt in the defendant's favor and acquit him?

Mr. Brown: I think it should be reasonable doubt. I don't believe it is "any doubt."

The Court: Yes.

183 Mr. Hogan: If you should entertain a reasonable doubt as to his mental capacity or legal capacity to commit a crime, would you resolve that doubt in his favor and acquit him? Would you, Mrs. Young?

Mrs. Young: Yes, sir.

Mr. Hogan: Mr. Bunton?

Mr. Bunton: Yes.

Mr. Hogan: Mr. Kelley?

Mr. Kelley: Yes.

Mr. Hogan: Mr. Rice?

Mr. Rice: Yes.

Mr. Hogan: Mr. Spalding?

Mr. Spalding: Yes.

Mr. Hogan: Mr. Tatum?

Mr. Tatum: Yes.

The Court: Mr. Kelley, when you said a few minutes ago you thought you misunderstood the question. I understood your answer a few minutes ago you think not; now you say you would. Did you misunderstand the question a minute ago?

Mr. Kelley: Yes. But since he has explained it I understand it.

Mr. Hogan: Mr. Kelley, we don't want to be misunderstood, and I have no desire to frame a question that you don't understand. Suppose I put it to you once more:

If you should, after hearing the evidence and the
184 law, entertain a reasonable doubt as to Thomas H. Robinson, Jr.'s mental or legal capacity to commit any of the acts charged against him in this indictment, would you resolve that reasonable doubt that you might entertain in his favor and acquit him?

Mr. Kelley: I think so.

Mr. Hogan: Now is that question plain to the other jurors who might not have understood it?

Following that same line, if you should, after hearing the evidence and the law as given to you by His Honor, should entertain a reasonable doubt as to his guilt regardless of his mental condition, would you then resolve that reasonable doubt in his favor and acquit him? Mrs. Young?

Mrs. Young: Yes.

Mr. Hogan: Mr. Bunton?

Mr. Bunton: I would.

Mr. Hogan: Mr. Kelley?

Mr. Kelley: I would.

Mr. Hogan: Mr. Rice?

Mr. Rice: I would.

Mr. Hogan: Mr. Spalding?

Mr. Spalding: I would give him the benefit of the doubt.

Mr. Hogan: Mr. Tatum?

185 Mr. Tatum: Yes.

Mr. Hogan: Have you, or any of you, who have just been called into the box ever sat upon any jury in any court or tribunal which either recommended or imposed the death penalty?

Mr. Rice?
Mr. Rice: I have not.
Mr. Hogan: Mr. Spalding?
Mr. Spalding: No.
Mr. Hogan: Mr. Tatum?
Mr. Tatum: No.
Mr. Hogan: Mrs. Young?
Mrs. Young: No.
Mr. Hogan: Mr. Bunton?
Mr. Bunton: No.
Mr. Hogan: Mr. Kelley?
Mr. Kelley: No.

Mr. Hogan: Do you believe that because this defendant has been indicted that that is some evidence of his guilt?

Or would the fact that he has been indicted create in your mind a prejudice, suspicion or bias that maybe he is guilty?

It is your jury, Mr. Brown.

186 Mr. Brown: We will not require Mr. Kelley or Mr. Spalding.

The Court: The Court will also excuse Mr. Younger Rice and Mr. Thompson Willett.

The Marshal: Mrs. Young, Mr. Tatum and Mr. Bunton will also vacate the box.

The Court: Now, members of the jury panel who have not yet been called into the box, I promised the attorneys in this case that I would adjourn temporarily at 5:30, and it is very close to that time now.

I regret that it is going to be necessary to have a night session tonight. We have to get this jury picked if we can so we can start on the trial tomorrow. We will not have a very long session this evening it looks like, but I will have to have your presence here this evening, and also the jury in the box.

We will adjourn at this time and convene at 7:30. We don't usually have night sessions. But we would like to have the examination of the other jurors concluded tonight if it can be reasonably done.

Do not discuss this matter with anyone and do not permit anyone to talk to you about it or in your presence.

Avoid contact with any person who might be discussing the case or who are interested in this case in any way.

The Marshal will take the five of you to dinner with him. I understood that there was some slight hitch
187 in getting you the luncheon we thought was waiting for you but we believe it will be better tonight and the rest of the time. All of you will return at 7:30 tonight.

At this time there was an adjournment for dinner, after which the following proceedings were had:

The Court: Mr. Marshal, call 7 more jurors.

The Marshal: Mrs. Jane Caldwell
Robert Goff
Richard Howell
William Thornberry
Claude Adams
Preston Joyes
Will Lee Mattingly

(The above 7 jurors called by the Marshal were sworn by the Clerk.)

The Court: You seven who just took the box have heard me outline to the other members of the panel what this case was about?

Are anyone of you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Or do you know anything about the facts of this case other than what you might have obtained by a casual reading of the newspapers?

Mr. Howell: I have a neighbor who sat on the
188 jury when this case was tried, Mr. Thomas Robinson, Sr. was tried, and I was County Judge at the time, and we talked the case over and I talked with him, and he talked with me, and I followed the case up with him and have talked to him since the new trial.

The Court: You feel that you have talked about the case until you cannot render an impartial verdict?

Mr. Howell: I think so.

The Court: What is your name?

Mr. Howell: Richard Howell.

The Court: All right, step down, Mr. Howell.

The Marshal: Covington Jett take the box.

(Covington Jett was sworn by the Clerk.)

The Court: Mr. Jett, you heard this case outlined to the other members of the panel?

Mr. Jett: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Jett: No.

The Court: Now I will repeat to the other seven members who took the box and to you, also, do you know anything about the facts of this case other than what you might have obtained from a casual reading of the newspapers?

Mr. Jett: I discussed it several times.

The Court: Did that give you any definite or
189 fixed opinion about the matter?

Mr. Jett: I think so.

The Court: You think so?

Mr. Jett: Yes, sir.

The Court: You feel that you have discussed it in such a way that you will not have an open mind on this question?

Mr. Jett: I think so.

The Court: All right, Mr. Jett.

The Marshal: Mr. Jett, vacate the box. J. Wilson Green take the box.

(The Clerk swore Mr. Green.)

The Court: Mr. Green, you have heard me outline this case to the other members of the panel?

Mr. Green: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Green: No, sir.

The Court: Do you know anything about the facts in the case other than what you might have obtained than by a casual reading of the newspapers?

Mr. Green: No.

The Court: Does any one of the 7 who took the box tonight have any fixed opinion about the matter which would prevent them from hearing and considering
190 this case with an open mind from the evidence pro-

duced during this trial?

Is there any reason why anyone of you cannot sit on the jury in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Brown: Mrs. Caldwell, under the law as given to you by the Court, and if the evidence as heard from the witness stand justifies it, would you recommend the death penalty in this case?

Mrs. Caldwell: Yes.

Mr. Brown: Mr. Goff, under the law as given to you by the Court, and if the evidence as heard from the witness stand justifies it, would you recommend the imposition of the death penalty in this case?

Mr. Goff: I would.

Mr. Brown: Mr. Green, under the law as given to you by the Court, and if the evidence as testified to from the witness stand justifies it, would you recommend the imposition of the death penalty in this case?

Mr. Green: Yes.

Mr. Brown: Mr. Thornberry, under the law as given to you by the Court and if the facts as testified to from the witness stand justifies it, would you recommend the death penalty against the defendant?

Mr. Thornberry: Yes, sir.

Mr. Brown: Mr. Adams, under the law as given
191 to you by the court, and if the facts as testified to justify it, would you vote for the imposition of the death penalty in this case?

Mr. Adams: Yes, sir.

Mr. Brown: Mr. Joyes, under the law as given to you by the Court, and if the facts as testified to justify it, would you vote for the imposition of the death penalty?

Mr. Joyes: I would.

Mr. Brown: Mr. Mattingly, under the law as given to you by the Court, and if the facts as testified to justify it, would you vote for the imposition of the death penalty against the defendant?

Mr. Mattingly: I could.

Mr. Brown: We will pass them to you.

Mr. Hogan: Mrs. Caldwell, where do you live?

Mrs. Caldwell: Anchorage, Kentucky.

Mr. Hogan: Are you the wife of Mr. George Caldwell an officer of the Louisville Trust Company?

Mrs. Caldwell: That's right.

Mr. Hogan: Of what religious denomination are you affiliated with?

Mrs. Caldwell: I am an Episcopalian.

Mr. Hogan: Mr. Goff, where do you live?

Mr. Goff: Hardinsburg.

192 Mr. Hogan: Is that in Breckenridge County?

Mr. Goff: Yes, sir.

Mr. Hogan: What is your business?

Mr. Goff: Lumber business.

Mr. Hogan: Do you work for or do you operate a lumber place?

Mr. Goff: I operate lumber place.

Mr. Hogan: You have your own business?

Mr. Goff: Yes.

Mr. Hogan: Which church do you attend or do you belong?

Mr. Goff: Baptist.

Mr. Hogan: Mr. Green, where do you live?

Mr. Green: Spencer County, near Taylorsville.

Mr. Hogan: What is your business?

Mr. Green: Farming.

Mr. Hogan: What is the size of your farm?

Mr. Green: About 200 acres.

Mr. Hogan: With what religious denomination are you affiilated?

Mr. Green: Christian.

Mr. Hogan: Mr. Thornberry, where do you live?

Mr. Thornberry: Hodgenville.

Mr. Hogan: What is your business?

Mr. Thornberry: I haven't got any.

193 Mr. Hogan: Are you retired?

Mr. Thornberry: I have been a farmer all my life until last September a year ago, and I sold out and quit. I am at present helping my daughter operate a service station at Hodgenville.

Mr. Hogan: You are a retired farmer, in other words,

aren't you?

Mr. Thornberry: Yes, sir.

Mr. Hogan: That is what you might call Mr. Goff, I guess. How many children do you have?

Mr. Thornberry: Seven.

Mr. Hogan: With what religious denomination are you affiliated?

Mr. Thornberry: Catholic.

Mr. Hogan: Are you a widower?

Mr. Thornberry: No, sir.

Mr. Hogan: Your wife is living?

Mr. Thornberry: My wife is living, yes.

Mr. Hogan: Mr. Adams, where do you live?

Mr. Adams: Audubon Park.

Mr. Hogan: What is your business, profession, or occupation?

Mr. Adams: I am a route supervisor at the Ewing Von Allmen Dairies.

Mr. Hogan: What is your religion?

194 Mr. Adams: Christian.

Mr. Hogan: Mr. Joyes, what is your business?

Mr. Joyes: I am in the lumber business and the wood preserving business.

Mr. Hogan: Where do you live?

Mr. Joyes: On the Alta Vista Road.

Mr. Hogan: I believe you are associated with Mr. Graham Brown in the lumber business?

Mr. Joyes: Yes, sir.

Mr. Hogan: What is your religious belief or what church do you attend?

Mr. Joyes: Presbyterian.

Mr. Hogan: Mr. Mattingly, where do you live?

Mr. Mattingly: In Marion County, at Loretto.

Mr. Hogan: What is your middle name?

Mr. Mattingly: Will Lee.

Mr. Hogan: Are you married?

Mr. Mattingly: Yes, sir.

Mr. Hogan: Any children?

Mr. Mattingly: I haven't got any children.

Mr. Hogan: Is your wife living?

Mr. Mattingly: Yes, sir.

Mr. Hogan: What is your business?

Mr. Mattingly: I was a farmer five years ago, and then I retired and I am working at a filling station now.

195 Mr.Hogan: You and Mr. Thornberry are in the same category—retired farmers and working at filling stations.

Mr. Mattingly: Yes.

Mr. Hogan: Whose products do you sell?

Mr. Mattingly: Gulf.

Mr. Hogan: What about you, Mr. Thornberry?

Mr. Thornberry: Gasoline service station—a filling station.

Mr. Hogan: Whose petroleum products or gasoline do you sell at this filling station?

Mr. Thornberry: The Ohio Oil Company.

Mr. Hogan: Well what I was trying to determine is whether or not it was the Stoll Oil Company's products?

Mr. Thornberry: No, sir, it has nothing to do with that.

Mr. Hogan: Now do you who have just been put in the box, are you related by the ties of blood or marriage to any member of the Stoll, Speed or Sackett families?

I take it by your silence that you are not related to any member of those families.

Mr. Hogan: Are you acquainted with any members of those three families I have just mentioned?

Mrs. Caldwell: I am, sir.

Mr. Hogan: What is the nature and extent of your acquaintanceship?

196 Mrs. Caldwell: It is of a social nature—not an intimate acquaintance at all.

Mr. Hogan: I believe you are an artist, aren't you?

Mrs. Caldwell: Trying to be one.

Mr. Hogan: Could you put it that you are artistically inclined?

Mrs. Caldwell: Yes.

Mr. Hogan: Are you not a director of the Speed Museum?

Mrs. Caldwell: That is true.

Mr. Hogan: And you have just recently been made a director of that place?

Mrs. Caldwell: Last spring.

Mr. Hogan: Did you know Mrs. Hattie Bishop Speed in her lifetime?

Mrs. Caldwell: Yes I did.

Mr. Hogan: How well did you know her?

Mrs. Caldwell: As you would know a person of a different generation. I had known her for a great many years but not intimately.

Mr. Hogan: Do you know Mrs. Alice Stoll?

Mrs. Caldwell: Yes.

Mr. Hogan: Do you know Mr. Berry Stoll?

Mrs. Caldwell: I have met him, yes.

Mr. Hogan: What social, religious, civic or charitable contacts do you have with the members of the Stoll,
197 Speed, or Sackett families?

Mrs. Caldwell: Well, as I say, social that would not in any way be termed intimate. I have never been in Mrs. Stoll's house nor has she been at mine. I have been with her at parties frequently in my life.

Mr. Hogan: Would your acquaintanceship with those families influence your verdict in this case?

Mrs. Caldwell: I think not.

Mr. Hogan: Would the fact that you are a director of the Speed Museum influence your verdict?

Mrs. Caldwell: No.

Mr. Hogan: Mr. Joyes, what is the nature of your acquaintance with the members of those three families?

Mr. Joyes: Well, I have known the Speed family and the Sacketts and the Stolls for ten or twenty years. I have been associated with Mr. Speed and Mrs. Speed on the Board of the Louisville Collegiate School that they have sponsored for years. I have been on the Board of Directors with Mr. William Stoll.

Mr. Hogan: Would it embarrass or humiliate you or influence your verdict in this case, considering your acquaintance and business relationship with the members of those families?

Mr. Joyes: I don't think so.

Mr. Hogan: Do you think you could render a fair
198 and impartial verdict in this case considering your acquaintanceship and business relationship and social relationship with those families and the members thereof after hearing the law and the evidence?

Mr. Joyes: I do.

Mr. Hogan: I will address my remarks now to those of you who have just been put into the box collectively and individually also so if you have any yes or no answer to make you will know that my remarks are addressed to all of you.

Have you or do you know Mr. Eli Brown or Mr. Dudley Inman?

Mr. Joyes: I know Mr. Brown.

Mrs. Caldwell: I know Mr. Brown.

Mr. Hogan: Mrs. Caldwell, what is the extent and nature of your acquaintance with Mr. Brown?

Mrs. Caldwell: Social.

Mr. Hogan: Mr. Joyes?

Mr. Joyes: I have known Mr. Brown and his family for years. He is a very good friend of my younger brother.

Mr. Hogan: Would the fact that you have known him for a number of years and possibly his father in the lumber business and the fact that your brother and Mr. Brown are very good friends, would those facts influence your
199 judgment in this case in which he is the prosecuting attorney?

Mr. Joyes: I don't think so.

Mr. Hogan: Mrs. Caldwell, would your acquaintanceship with Mr. Brown influence your verdict?

Mrs. Caldwell: No, sir, it would not.

Mr. Hogan: Are you or are any of you an officer, stockholder or employee of any company, association or corporation in which the Sacketts, Speed or Stoll families have an interest?

Mr. Joyes: I am not in a business enterprise, but at the Louisville Collegiate School is the only thing. I am a director in that—and vice president.

Mr. Hogan: Mrs. Caldwell, are you in that category

of being an officer or agent or business associate in any firm or corporation in which the members of the Sackett, or Stoll or Speed families have an interest?

Mrs. Caldwell: No. Unless you consider the directorship of the Speed Museum.

Mr. Hogan: Other than that?

Mrs. Caldwell: No.

Mr. Joyes: I am also a director in the Speed Museum.

Mr. Hogan: Would that influence your verdict in this case in which the granddaughter of Mrs. Hattie Bishop Speed is the prosecuting witness?

Mr. Joyes: No.

200 Mr. Hogan: Mrs. Caldwell, is your husband an officer, stockholder or director in any of those companies in which these families have an interest?

Mrs. Caldwell: I am not certain. He may have some stock in the Louisville Cement Company but I could not be sure about that.

Mr. Hogan: Is it your belief that he has?

Mrs. Caldwell: He had one time.

Mr. Hogan: The Louisville Cement Company is a company operated by the Speed family, isn't it?

Mrs. Caldwell: Yes.

Mr. Hogan: Do you know what connection with that company Mr. Will Speed has? The father of Mrs. Alice Stoll?

Mrs. Caldwell: No I don't know exactly. I know he did have a connection at one time.

Mr. Hogan: Isn't he president of that company?

Mrs. Caldwell: I don't know.

Mr. Hogan: Have you, or any of you who have just been called to the box, served upon a jury in this court or in circuit court within the past 12 months, other than this term of service?

Mr. Mattingly: I have.

Mr. Hogan: I take it by your silence that the others have not. Mr. Mattingly, what court did you serve in?

201 Mr. Mattingly: Circuit Court in Lebanon in January.

Mr. Hogan: Are you or is any member of your family

or household a member or stockholder or director of any business, firm or corporation which now does or has in the past done business with the United States or any of its subdivision including defense or war plants owned or controlled, leased, supervised or operated in furtherance of the war effort or the home defense effort?

Mr. Joyes: Yes I am.

Mr. Hogan: Tell us about that?

Mr. Joyes: Our lumber business and wood preserving business is 50% with either the government agencies direct or sub-contracts.

Mr. Hogan: What position do you hold with that company?

Mr Joyes: Vice president and director.

Mr. Hogan: What is the name of that company?

Mr. Joyes: W. P. Brown Lumber Company.

Mr. Hogan: Is Mr. Eli Brown II, the father of Mr. Eli Brown III, in that company?

Mr. Joyes: No, sir.

Mr. Hogan: That is a different Brown?

Mr. Joyes: Yes, sir.

Mr. Hogan: Mr. Eli Brown's father was in the lumber business at one time?

202 Mr. Joyes: I think he had a chair factory. I was in the manufacturing end of the business and he was in the retail end.

Mr. Hogan: As vice president of the W. P. Brown Lumber Company, do you have contacts or business relationships with members of the United States Government?

Mr. Joyes: Yes, sir.

Mr. Hogan: Extensive?

Mr. Joyes: Very extensive; yes, sir.

Mr. Hogan: Are you jurors bonafide housekeepers and residents of the State of Kentucky?

Does there exist in the minds of any of you a state of mind in regard to this case or to this defendant that you cannot try this case impartially and without prejudice to the rights—to the substantial rights of this defendant?

I take it by your silence that the answers of each of you

is in the negative.

Have you read at any time in the newspapers or magazines an account of the commission of the crime alleged in the indictment?

Mr. Joyes: I have, but not recently.

Mr. Hogan: At any time, I mean?

Mr. Joyes: Yes, sir.

Mr. Hogan: Now Mrs. Caldwell, have you so read
203 the magazines and the newspaper articles?

Mrs. Caldwell: Not recently. I read it in the Alabama papers at the time of the crime.

Mr. Hogan: What was the last part of your answer?

Mrs. Caldwell: I was staying in Alabama at the time of the kidnapping and I read it in the papers there.

Mr. Hogan: That was some 9 years ago?

Mrs. Caldwell: Yes.

Mr. Hogan: Did you read in the magazine section of the Courier-Journal of November 21, 1943, this article about this case?

Mrs. Caldwell: No.

Mr. Hogan: Did you, Mr. Joyes?

Mr. Joyes: No.

Mr. Hogan: Did you, Mr. Mattingly?

Mr. Mattingly: No. I heard talk about it.

Mr. Hogan: Mr. Thornberry?

Mr. Thornberry: No.

Mr. Hogan: Did you, or any of you, who have read at any time in the newspapers or magazines an account of the crime alleged in this indictment, did you form or express any opinion after you read those articles about the guilt or innocence of this defendant?

Mr. Joyes: I probably did some years ago at the
204 time, but I have not thought about it for the last 8 or 9 years.

Mr. Hogan: Well, what was your opinion at that time?

Mr. Joyes: I really do not remember any of the details of the case. Of course you could not help but remember the case. It was a very prominent thing to me due to the fact that it was about people I knew.

Mr. Hogan: I mean, did you form some opinion after

reading those?

Mr. Joyes: I probably did.

Mr. Hogan: Well, have you carried that opinion on down through the years to this time?

Mr. Joyes: I hardly think so, and of course I had an opinion at that time and, as I say, until this thing came up again I did not have—I had not even discussed it for 5, 6, or 7 years or even thought about it.

Mr. Hogan: So that opinion, was it favorable or unfavorable to this defendant?

Mr. Joyes: I think at the time it was unfavorable.

Mr. Hogan: But you will not say then that you have changed your unfavorable opinion as to the guilt or innocence of this defendant?

Mr. Joyes: No I will not say that I have changed my opinion but I think I could give him a fair verdict after the evidence is presented in this court.

205 Mr. Hogan: As it now stands, you are in the position of at one time having formulated an unfavorable opinion toward this defendant, but you now believe that in the trial of this case if the evidence was sufficient to overcome that unfavorable opinion, you may or may not be able to overlook that and forget the former opinion that you formulated?

Mr. Joyes: I think my mind is open on the subject.

Mr. Hogan: Mrs. Caldwell, you had an answer to make as to the opinion you formulated?

Mrs. Caldwell: My feeling is much the same as that of Mr. Joyes. At that time I had an opinion because it was about the people I knew but I think now I have an open mind on it.

Mr. Hogan: If I understand your answer, at the time you read these articles, you formed an unfavorable opinion?

Mrs. Caldwell: I think I did.

Mr. Hogan: You never did subsequent to that formulate a favorable opinion to this defendant?

Mrs. Caldwell: I discussed it quite a little then. But I do not think I have changed that opinion because I have not discussed it but I still think I have an open mind about

it.

Mr. Hogan: Are any of you who have been called
206 this last time on the panel guardian or ward, attorney or client, master or servant, landlord or tenant, employer or employee on wages of the members of the family of Mrs. Alice Speed Stoll or the Speed, Stoll or Sackett families?

Have you ever complained against the defendant in any criminal prosecution or proceeding?

Did you serve on the Grand Jury which returned the indictment in this case?

Were you a member of a former jury sworn to try Thomas H. Robinson Sr. and Frances Robinson who were jointly indicted in this case with this defendant in October 1934?

Are you now or have you ever been or are any members of your family or household stock or bondholders, office holders or directors of any United States government corporations, associations or agencies such as the Federal Land Bank, the Commodity Credit Corporation or the AAA or any of the alphabetical groups or divisions?

Mr. Joyes: I had a brother in the Office of Price Administration until about 6 months ago in Washington.

Mr. Hogan: Has he now severed his relations with that office?

Mr. Joyes: Yes.

Mr. Hogan: Has any member of your household now or at any time ever been directly or indirectly employed by the United States?

207 Mr. Mattingly: I was Chairman of the Draft Board 2 years.

Mr. Hogan: Are you still Chairman, Mr. Mattingly?

Mr. Mattingly: Yes.

Mr. Adams: You said any member of the family?

Mr. Hogan: Yes?

Mr. Adams: I have a brother who was in the Veterans' Bureau but he is now in the Army.

Mr. Hogan: What is his name?

Mr. Adams: A. Y. Adams.

Mr. Hogan: How long was he so connected?

Mr. Adams: Since 1931 until he went into the Army at this time. He was a reserve officer.

Mr. Hogan: Do you now, or have you ever received a pension, salary, bonus, soldier or sailor allotment, benefit or remuneration in any form from the United States of America?

Mr. Joyes: I received a bonus in the last war for serving.

Mr. Hogan: Any other answers to that question?

Mrs. Caldwell: My husband received the same bonus.

Mr. Joyes: Your last question?

Mr. Hogan: Do you receive or have you ever received railroad retirement pension or payment?

Mr. Joyes: No.

208 Mr. Hogan: Do you now, or have you ever, received from the United States any subsidy allowance or bonus or crop cut-out payment?

Mr. Thornberry: I did when I was farming.

Mr. Hogan: Mr. Adams?

Mr. Adams: Yes, sir, Triple A. payments in 1941.

Mr. Hogan: You do not receive them now?

Mr. Adams: No.

Mr. Hogan: Anybody else have an answer?

Mr. Goff: I receive Triple A payments.

Mr. Hogan: Are you a member of any board or commission of the United States, such as draft boards or the manpower commission or the Transportation Commission?

Are you now or have you ever been an officeholder or appointee of the government?

Do you entertain any prejudice against one charged with a crime who interposes insanity as a defense?

I take it by your silence that you do not.

Do you have or will you have any prejudice against one, particularly this defendant, if upon the trial of this case he should interpose a plea of insanity as a defense and would establish that thereafter he had made a recovery and is now restored to sanity?

I take it by your silence that your answers individually and collectively are no?

209 Have you formulated any opinion whatsoever as

to the guilt or innocence of this defendant?

Mrs. Caldwell: Only insofar as I have expressed before, having read the accounts in the paper.

Mr. Hogan: Mrs. Caldwell, I would like for you to tell us just what that opinion amounted to at the time you read about it?

Mrs. Caldwell: Well I think I can best express it by saying that I was interested in the case from the fact that they were people I had known and that my family had known.

Mr. Hogan: You were impassioned and inflamed?

Mrs. Caldwell: No. I was not impassioned, but I certainly did not have a very favorable opinion at that time.

Mr. Hogan: And I understood you to say you have not changed that opinion up to this time?

Mrs. Caldwell: No, I have given it very little thought.

Mr. Hogan: Mr. Joyes, what is your opinion, or what was your opinion at that time?

Mr. Joyes: My opinion was probably the same as 99% of the people, a guilty plea was made and I just assumed that he was guilty.

Mr. Hogan: And you formulated in your mind at that time that he probably was guilty?

210 Mr. Joyes: Yes, sir.

Mr. Hogan: And you likewise have not changed your opinion?

Mr. Joyes: Well, I am frank to say that I have no opinion now. The case has to be tried and my mind is open on it.

Mr. Hogan: Well, do you intend by that that you have changed your opinion?

Mr. Joyes: I did not say that I have changed my opinion—I have not had anything to change my opinion.

Mr. Hogan: Then your opinion is the same as it was back there, that of guilty?

Mr. Joyes: Up to date, yes.

Mr. Hogan: If you should, after hearing evidence and the law as given to you by His Honor, entertain a reasonable doubt either as to the capacity of this defendant to commit any of the acts charged in the indictment, or enter-

tain a reasonable doubt as to his guilt, would you resolve that doubt in favor of this defendant and acquit him?

Mr. Joyes: Yes, sir.

Mr. Hogan: Mrs. Caldwell?

Mrs. Caldwell: Yes, sir.

Mr. Hogan: Mr. Goff?

Mr. Goff: Yes, sir.

Mr. Hogan: Mr. Green?

211 Mr. Green: Yes, sir.

Mr. Hogan: Mr. Thornberry?

Mr. Thornberry: I didn't understand the question.

Mr. Hogan: Mr. Thornberry, is your hearing a little bit impaired? Do you have any difficulty in understanding me from here?

Mr. Thornberry: What is that?

Mr. Hogan: Is your hearing in any wise impaired? Can you understand what I am saying?

Mr. Thornberry: Most of the things. Some times I can't.

Mr. Hogan: Do you have any impairment of hearing?

Mr. Thornberry: A little—not very much. Sometimes I can understand you and sometimes I can't.

Mr. Hogan: You have not been able to understand everything that I have said?

Mr. Thornberry: Not everything—some things I understand.

Mr. Hogan: Well, let me ask you in a little bit louder tone then. If you should, after hearing the evidence and the law as given to you by His Honor, entertain a reasonable doubt either as to the capacity of the defendant, Thomas H. Robinson Jr., to commit any of the acts charged in the indictment; or should entertain, after hearing

212 the evidence and the law, a reasonable doubt as to his guilt, would you then resolve that doubt in favor of this defendant and acquit him?

Mr. Thornberry: Yes, sir.

Mr. Hogan: Mr. Adams, did you have an answer to make to that particular question?

Mr. Adams: No.

Mr. Hogan: To all of you, have you ever sat upon any

jury in any court, or tribunal, which either recommended or imposed the death penalty?

I take it by your silence that your answers are no.

Do you believe that because this defendant has been indicted that that is some evidence of his guilt?

Or, would the fact that he has been indicted create in your mind a prejudice, bias or suspicion that he may be guilty?

I take it by your silence that your answers are no.

Mr. Hogan: Mr. Brown, I pass them to you.

213 Mr. Brown: We accept the jury.

Mr. Hogan: May I see you at the judge's table, Mr. Brown?

(There was a conference off the record held between counsel and the Court.)

The Court: The defense motion to excuse Mrs. Caldwell and Mr. Joyes is sustained. They may be excused from the box.

The Marshal: Mr. Claude Adams, vacate the box.

The Court: Call three more.

The Marshal: Mrs. Mary Swope, Frank P. Able, Earl W. Ackerman.

(The three above named jurors were duly sworn by the Clerk.)

The Court: You three who have just taken your seats in the box have heard me previously explain this indictment to the other members of the panel. Anyone of you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Does anyone of you know anything about the facts of this case other than what you might have learned by the casual reading of the newspapers?

Have you had any participation in the case or connection with anybody who had any participation in the case in any way?

Has your reading or talk with anyone given you any opinion, any fixed opinion, in this case about the guilt

214 or innocence of this defendant?

Or is there any reason why anyone of you three cannot sit as a jury in this case and render a fair and im-

partial verdict according to the law and the evidence?

Mr. Brown.

Mr. Brown: Mrs. Swope, under the law as given to you by the Court, and if the facts as testified to from the witness-stand justify it, would you recommend a death penalty in this case?

Mrs. Swope: Yes.

Mr. Brown: Mr. Able, under the law as given to you by the Court, and if the facts as testified to from the witness-stand justify it, would you recommend a death penalty in this case?

Mr. Able: Yes.

Mr. Brown: Mr. Ackerman, under the law as given to you by the Court, and if the facts testified to from the witness-stand justify it, would you recommend a death penalty in this case?

Mr. Ackerman: Yes, sir.

Mr. Brown: I pass them to you.

Mr. Hogan: Mrs. Swope, where do you live?

Mrs. Swope: I live at the Weissinger-Gaulbert, Third and Broadway.

Mr. Hogan: Do you have any children?

215 Mrs. Swope: Yes, sir.

Mr. Hogan: What is your religious belief?

Mrs. Swope: A Baptist.

Mr. Hogan: Mr. Able, where do you live?

Mr. Able: 4106 Winchester Road.

Mr. Hogan: Where is that located?

Mr. Able: St. Matthews.

Mr. Hogan: What is your business or profession?

Mr. Able: I am with Vissman & Company.

Mr. Hogan: In what capacity?

Mr. Able: Well, I am department manager, in an executive capacity.

Mr. Hogan: What church do you attend?

Mr. Able: The Baptist Church.

Mr. Hogan: Are you married?

Mr. Able: Yes, sir.

Mr. Hogan: Have you any children?

Mr. Able: Yes, sir.

Mr. Hogan: Mrs. Swope, do you have children?

Mrs. Swope: Yes, I have one daughter.

Mr. Hogan: And what age is your daughter?

Mrs. Swope: She is sitting right there with the red coat on—twenty-three years old.

Mr. Hogan: Mr. Ackerman, where do you live?

Mr. Ackerman: 100 S. 36th Street.

216 Mr. Hogan: What is your business or profession?

Mr. Ackerman: Head draftsman, Southern Bell Telephone Company.

Mr. Hogan: What is your religious belief?

Mr. Ackerman: I am not affiliated with any church.

Mr. Hogan: Are you married?

Mr. Ackerman: Yes, sir.

Mr. Hogan: Have any children?

Mr. Ackerman: Two.

Mr. Hogan: Directing my remarks now to you three who have just taken your places in the box, are you acquainted with Mr. Eli Brown?

Have you any social, religious or civic contact with him or any members of his family?

Do you know Mr. Dudley Inman who sits at Mr. Brown's right.

Do you have any business, social or civic contacts with him or members of his family?

Do you three or anyone of you, or any of you, know Mrs. Alice Stoll or any member of the Stoll family, the Sackett family, or the Speed family?

Mr. Able: I know Mr. Bill Stoll—W. A. Stoll.

Mr. Hogan: What is the nature and extent of that acquaintanceship, Mr. Able?

Mr. Able: Well, I have been associated with Mr.

217 Bill Stoll in a number of civic enterprises.

Mr. Hogan: Such as what?

Mr. Able: Well, principally the Board of Trade activities.

Mr. Hogan: Are you a member of the Board of Trade?

Mr. Able: Our company is.

Mr. Hogan: Would that acquaintanceship with Mr. Stoll affect your decision in this case in which his sister-

in-law is to be the chief prosecuting witness?

Mr. Able: I shouldn't think so.

Mr. Hogan: How long have you known Mr. Stoll—William Stoll?

Mr. Able: About fifteen years, I expect.

Mr. Hogan: Do any of the other—do the other two members know any member of the Speed, Stoll or Sackett families or have any contacts or acquaintanceship with them?

Do you three own any stock in any company in which the Stoll, Speed or Sackett families are interested?

Have you served upon a jury in the Circuit Court here or any other place, or in this court, within the past twelve months?

Are you a housekeeper?

I take it that your answers of the three is in the affirmative.

Have any of you three read any newspaper ac-
218 counts of this alleged crime?

When you read those, did you formulate any opinion about the guilt or innocence of this defendant?

Mr. Able: I did.

Mr. Hogan: You say you did?

Mr. Able: Yes.

Mr. Hogan: Was that opinion unfavorable to this defendant?

Mr. Able: Unfavorable; yes, sir.

Mr. Hogan: Do you still have that opinion?

Mr. Able: Yes. I haven't had any reason to change it.

Mr. Hogan: Mrs. Swope, have you formulated any opinion from anything you might have read?

Mrs. Swope: No, sir.

Mr. Hogan: Mr. Ackerman, have you formulated any opinion?

Mr. Ackerman: No, sir; just considered it a piece of news and that was all.

Mr. Hogan: Have any of you ever been employed by any concern in which the Speed, Stoll or Sackett families have an interest?

Are you related by the ties of blood or marriage to any

members of those three families?

Are any of the three of you or any one of the
219 three a member of any board or commission of the United States Government?

Have you received, directly or indirectly, a subsidy or cut-out payment, or other bonus of any kind, from the Government?

Mr. Able: Our company does.

Mr. Hogan: That's a packing house?

Mr. Able: Yes, sir. I received a bonus after the last war.

Mr. Hogan: Other than a soldier's bonus, I refer to.

Mr. Able: No, sir.

Mr. Hogan: Are you now, or have you ever been, an office holder of the United States Government?

Do you entertain any prejudice against one charged with a crime who interposes insanity as a defense?

Mr. Able: I do.

Mr. Hogan: How about you, Mr. Ackerman?

Mr. Ackerman: No, sir.

Mr. Hogan: Mrs. Swope?

Mrs. Swope: No, sir.

Mr. Hogan: Do you have or will you have any prejudice against one interposing a plea of insanity as a defense who thereafter makes a recovery and is restored to sanity? Do you have a prejudice?

Mr. Able: Yes.

Mr. Hogan: Do you have, Mr. Ackerman?

220 Mr. Ackerman: No, sir.

Mr. Hogan: And Mrs. Swope, do you have?

Mrs. Swope: No, sir.

Mr. Hogan: Have you formulated any opinion whatsoever as to the guilt or innocence of this defendant? Of course, I believe your answer was that you have—

The Court: I think all three of them have answered that, haven't they?

Mr. Hogan: I understood that only Mr. Able had.

The Court: Didn't the other two answer those questions?

Mr. Ackerman: No, sir.

Mr. Hogan: If you should, after hearing the evidence and the law as given to you by His Honor, entertain a reasonable doubt either as to the capacity of this defendant to commit any of the acts charged in the indictment or as to his guilt, would you resolve that doubt in favor of this defendant and acquit him? Would you, Mrs. Swope?

Mrs. Swope: Yes.

Mr. Hogan: If you should entertain a reasonable doubt either as to his capacity to commit any of the acts charged in the indictment or as to his guilt, would you resolve that doubt in favor of this defendant and acquit him?

Mrs. Swope: Yes.

Mr. Hogan: What was your answer?

221 Mr. Brown: She said yes.

Mr. Hogan: Would you, Mr. Ackerman?

Mr. Ackerman: Yes, sir.

Mr. Hogan: Would you, Mr. Able?

Mr. Able: Probably I would.

Mr. Hogan: Has anyone of you three ever sat upon any jury in any court or in any proceeding which either recommended or imposed the death penalty? Mr. Able?

Mr. Able: No. I voted for it.

Mr. Hogan: For the death penalty?

Mr. Able: Yes, sir.

Mr. Hogan: I take it from the silence of the other two that you have not, Mrs. Swope and Mr. Ackerman.

Mr. Ackerman: No, I haven't.

Mrs. Swope: No.

Mr. Hogan: Do you believe that because this defendant has been indicted, that that is some evidence of his guilt or would the fact that this defendant has been indicted create in your mind a prejudice or suspicion that he may be guilty?

Mr. Ackerman: No, sir.

Mrs. Swope: No, sir.

Mr. Able: It might create a suspicion, but that's all.

Mr. Hogan: It would do that?

222 Mr. Able: I said it might do that.

Mr. Hogan: You may take them, Mr. Brown.

Mr. Brown: We excuse Mrs. Swope.

Mr. Hogan: Mr. Brown, I would like to see you at the Judge's stand.

(A conference was held between counsel and the Court without the hearing of the Jury.)

The Court: Motion of the defendant to excuse Mr. Able is sustained for cause. Any further challenges at this time?

Mr. Hogan: No further challenges.

The Court: All right, let's have two more.

The Marshal: Thomas J. Beaven; Wilbur F. Bott.

(The two above named jurors were duly sworn by the Clerk.)

The Court: Now, you two gentlemen who just took your seats in the box, you heard me explain this case to the other members of the panel. Either one of you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Do you know anything about the facts of this case other than what you have learned through your casual reading of the newspapers?

Have you had any connection with anybody who has had any participation in this case in any way, directly
223 or indirectly?

Is there any reason why either one of you cannot sit as a juror in this case and render a fair and impartial verdict in this case according to the law and the evidence?

Has either one of you any fixed opinion in this case from anything you have read or heard, or from any person you have talked with about this case?

Mr. Brown.

Mr. Brown: Mr. Beaven, under the law as given to you by the Court, and if the facts as testified to from the witness-stand justify it, would you recommend a death penalty in this case?

Mr. Beaven: I could.

Mr. Brown: Mr. Bott, under the law as given to you by the Court, and if the facts justify it, would you recommend a death penalty in this case?

Mr. Bott: I could not.

The Court: All right, step aside, Mr. Bott.

The Marshal: Mrs. Harriet Grant.

(The above named juror was duly sworn by the Clerk.)

The Court: Mrs. Grant, you heard me explain the general nature of this case?

Mrs. Grant: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

224 Mrs. Grant: No.

The Court: Do you know anything about the facts of the case other than what you may have learned from the casual reading of the newspapers?

Mrs. Grant: Well, I heard the case years ago.

The Court: You got that from reading the newspapers?

Mrs. Grant: Yes.

The Court: Or from just casual discussion with friend?

Mrs. Grant: Yes.

The Court: Had you formed any opinion about the guilt or innocence of this defendant?

Mrs. Grant: Yes.

The Court: You did form an opinion at that time?

Mrs. Grant: Yes.

The Court: Has that opinion been changed in any way?

Mrs. Grant: No.

The Court: You feel that that opinion is such that it would prevent you from exercising your free and independent judgment in this case?

Mrs. Grant: Yes, sir.

The Court: All right, Mrs. Grant, you are excused.

The Marshal: Miss Anna Amelia Barth.

(The above named juror was duly sworn by the Clerk.)

The Court: Miss Barth, you heard this case ex-

225 plained to the other members of the panel?

Miss Barth: I did.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Miss Barth: No.

The Court: Do you know anything about the facts of the case other than what you may have learned through the casual reading of newspapers?

Miss Barth: No.

The Court: That applies to the gentleman who also took his seat in the box. Either one of you have any opinion in this case which you formed from what you have read or heard in the past?

Miss Barth: No.

The Court: Is there any reason why either one of you cannot sit as a juror in this case and render a fair and impartial verdict in the case according to the law and evidence?

Miss Barth: I am no housekeeper.

The Court: You are not a housekeeper. Do you board?

Miss Barth: No.

The Court: Where do you live?

Miss Barth: 1277 Everett Avenue.

The Court: What is your arrangement there?

Miss Barth: I take care of my mother and father.

226 The Court: Don't you keep house for them?

Miss Barth: Yes, I keep house for them, but I am not a housekeeper.

The Court: You keep house for them, you run the house?

Miss Barth: That's right.

The Court: Any servants there?

Miss Barth: No.

The Court: You do all the work?

Miss Barth: We have a part time servant.

The Court: Part time servant?

Miss Barth: Yes.

The Court: Do you manage the servant?

Miss Barth: That's right.

The Court: You do keep house there, don't you?

Miss Barth: That's right.

The Court: I thought you said you didn't keep house.

Miss Barth: I thought you meant something else.

The Court: You may ask her.

Mr. Brown: Miss Barth, under the law as given to you by the Court, and if the facts testified to from the witness-stand justify it, would you recommend a death penalty in this case?

Miss Barth: No.

227 The Court: All right, step aside Miss Barth.

The Marshal: Lee Grigsby.

(The above named juror was duly sworn by the Clerk.)

The Court: Those jurors that have been excused, if they want to leave, they can go, but before they leave please call at the Clerk's office for your certificate and at the Marshal's office for your compensation before you leave.

Mr. Grigsby, you heard me explain this case to the other members of the jury?

Mr. Grigsby: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Grigsby: No, sir.

The Court: Do you know anything about the facts of the case, other than what you may have obtained from casual reading of the papers?

Mr. Grigsby: Well, Your Honor, I have discussed it on several occasions and I have got a certain amount of doubt in my mind. I just don't believe that I would be qualified to serve as a juror in this case.

The Court: You feel that you now have certain views about it that would carry into the case that would have to be overcome by evidence?

Mr. Grigsby: I believe so.

228 The Court: All right, Mr. Grigsby, step aside.

The Marshal: William Selke.

(The above named juror was duly sworn by the Clerk.)

The Court: Mr. Selke, you understand what this case is about?

Mr. Selke: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Selke: No, sir.

The Court: Do you know anything about the facts of the case, other than what you may have learned from casual reading of the papers or talking with people?

Mr. Selke: Very little I have heard about the case.

The Court: Very little you have heard about it?

Mr. Selke: Yes, sir.

The Court: Have you any opinion about the guilt or

innocence of this defendant at all?

Mr. Selke: None whatever.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Selke: I think I can be fair.

The Court: Mr. Brown.

Mr. Brown: Mr. Selke, under the law as given to you by the Court, and if the facts testified to from the witness-stand justify it, would you recommend a death
229 penalty in this case?

Mr. Selke: Yes, sir.

Mr. Brown: That's all I care to ask him.

Mr. Hogan: Where do you live, Mr. Selke?

Mr. Selke: 813 S. 45th.

Mr. Hogan: What is your occupation?

Mr. Selke: I do collecting for different concerns.

Mr. Hogan: Are you married?

Mr. Selke: Yes, sir.

Mr. Hogan: Have you any children?

Mr. Selke: No, sir.

Mr. Hogan: To what church do you belong?

Mr. Selke: St. Paul's Evangelical Church.

Mr. Hogan: Mr. Beaven, what is your business?

Mr. Beaven: Farmer.

Mr. Hogan: How many acres do you have?

Mr. Beaven: My brother and I have 186.

Mr. Hogan: Do you receive any cut-out payments?

Mr. Beaven: Yes, under the Triple A.

Mr. Hogan: Mr. Selke and Mr. Beaven, are either of you related by the ties of blood or marriage to either a member of the Speed, Sackett or Stoll families?

Mr. Selke: No, sir.

Mr. Hogan: Have you any acquaintanceship or social or civic or religious contact with any members of the
230 Stoll, Speed or Sackett families?

Mr. Selke: No, sir.

Mr. Hogan: Are you an officer, stockholder or director in any company in which those families or any members thereof have any interest?

Mr. Selke: No, sir.

Mr. Hogan: Have you read any newspaper articles about this case?

Mr. Selke: I haven't.

Mr. Beaven: I have.

Mr. Hogan: Mr. Beaven, from the reading of those newspaper or magazine articles, did you formulate any opinion as to the guilt or innocence of this defendant?

Mr. Beaven: I may have had an opinion at the time I read it.

Mr. Hogan: Was that an unfavorable opinion to this defendant?

Mr. Beaven: Well, I suppose it was.

Mr. Hogan: Have you changed that opinion in any wise?

Mr. Beaven: Well, evidence could change it, that would be all.

Mr. Hogan: But you, yourself, have not changed it in your own mind?

Mr. Beaven: No, not at the present I haven't.

231 Mr. Hogan: Mr. Selke, did you read any newspaper or magazine article about this case?

Mr. Selke: No, sir.

Mr. Hogan: Never read a thing on earth about it?

Mr. Selke: No, sir.

Mr. Hogan: Never?

Mr. Selke: No, sir.

Mr. Hogan: Do you read newspapers?

Mr. Selke: Very little.

Mr. Hogan: Are you now, addressing my remarks and my questions to both of you, employed or have you ever been employed by the United States Government?

Mr. Selke: I haven't.

Mr. Beaven: No, sir.

Mr. Hogan: Are you now, or have you ever been a stockholder or bond holder, or office holder of any department or branch of the United States Government?

Mr. Selke and Mr. Beaven: No, sir.

Mr. Hogan: Are you a housekeeper, Mr. Selke?

Mr. Selke: Yes, sir.

Mr. Hogan: Do you or either of you receive any bonus or remuneration of any kind from the Government?

Mr. Selke: No, sir.

Mr. Beaven: Only the Triple A.

Mr. Hogan: Only the Triple A as to you, Mr. Beaven. Are you, or either of you, a member of any board,
232 such as a draft board or commission of the United States Government?

Mr. Selke: No.

Mr. Beaven: I was on a committee for the transportation of livestock in Marion County.

Mr. Hogan: Do you entertain any prejudice against one charged with a crime who interposes insanity as a defense?

Mr. Beaven: No, sir.

Mr. Hogan: You, Mr. Selke?

Mr. Selke: No, sir.

Mr. Hogan: Do you have, or will you have, or would you have, any prejudice against one interposing a plea of insanity as a defense who thereafter makes a recovery and is restored to sanity?

Mr. Selke: No, sir.

Mr. Beaven: No, sir.

Mr. Hogan: If you should after hearing the evidence and the law as given to you by His Honor, entertain a reasonable doubt either as to the capacity of this defendant to commit any of the acts charged in the indictment or as to his guilt, would you resolve that doubt in favor of this defendant and acquit him?

Mr. Selke and Mr. Beaven: Yes, sir.

Mr. Hogan: Have you, or either of you, ever sat upon any jury in any court or tribunal which either recom-
233 mended or imposed the death penalty?

Mr. Selke: No, sir.

Mr. Hogan: Have you, Mr. Beaven?

Mr. Selke: No, sir.

Mr. Hogan: Do you believe that because this defendant has been indicted, that that is some evidence of his guilt, or would the fact that this defendant has been indicted create in your mind a prejudice, bias or suspicion

that he may be guilty?

Mr. Beaven: I would hold him innocent until proven guilty.

Mr. Selke: So would I.

Mr. Hogan: Beyond a reasonable doubt?

Mr. Beaven: Yes, sir.

Mr. Hogan: I mean by that, would you hold him innocent and vote to acquit him unless the Government proved their case against him beyond a reasonable doubt?

Mr. Beaven: Yes, sir.

Mr. Hogan: Mr. Brown, you may have them.

Mr. Brown: We accept the jury.

Mr. Hogan: Mr. Brown, may I see you at the Judge's desk?

(Counsel conferred with the Court out of the hearing of the Jury.)

The Court: The defense motion to excuse Mr. Beaven for cause is sustained. Any challenge by the defendant?

234 Mr. Hogan: I would like to ask Mr. Selke another question or two, if Your Honor will permit. Mr. Selke, are you connected with the Fleming-DeLeuil Collection Agency?

Mr. Selke: My wife is.

Mr. Hogan: Is that in the Realty Building?

Mr. Selke: In the Starks Building.

Mr. Hogan: Is she an officer of that concern?

Mr. Selke: No, sir, works on a commission

Mr. Hogan: There is a Mr. Fleming who is in the collection business, or was, in the Realty Building. Do you know anything about him?

Mr. Selke: That's Mr. Fleming's brother.

Mr. Hogan: Your wife is assoicated with Mr. Fleming's brother that I know in the Realty Building. Your concern is located in the Starks Building.

Mr. Selke: Yes, sir.

Mr. Hogan: Would you mind telling us your age, Mr. Selke?

Mr. Selke: My age is 76.

Mr. Brown: I am going to object to asking how many more jurors we have.

Mr. Hogan: I can count them on the page, Mr. Brown, as readily as I can ask the Marshal.

Mr. Brown: I object to asking who the other jurors are.

Mr. Hogan: I am not inquiring who they are,
235 but the number. I can count them from here and get the same information.

The Court: We have some more coming tomorrow.

The Marshal: Vacate the box, Mr. Selke. Thomas Shelburne. Mrs. Mina Chamblee—I believe that's the lady who tells me her name has been changed since she was drawn.

(The two last above named jurors called by the Marshal were duly sworn by the Clerk.)

The Court: You two who have just taken the box are familiar with the charge which this indictment makes against the defendant, Thomas Henry Robinson, Jr.

Either one of you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Either one of you know anything about the facts of this case other than what you may have acquired through casual reading or conversation with people?

Mrs. Chamblee: No, sir.

The Court: How about you, sir?

Mr. Shelburne: I have discussed the case.

The Court: Has that caused you to have any fixed opinion in the case about the guilt or innocence of this defendant?

Mr. Shelburne: Yes.

The Court: Is that opinion such that you feel that you enter this case under some feeling of prejudice against him?

236 Mr. Shelburne: Yes, sir.

The Court: All right, sir, step down. What was your name?

Mr. Brown: That's Mr. Shelburne.

The Marshal: Charles P. Hayden.

(The above named juror called by the Marshal was duly sworn by the Clerk.)

The Court: Mr. Hayden, you heard me explain the

case to the other members of the panel?

Mr. Hayden: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Hayden: No, sir.

The Court: Do you know anything about the facts of the case other than what you may have learned through casual reading of the newspapers?

Mr. Hayden: Judge, at the time this happened I was working at the Louisville Cement Company.

The Court: Merely working there may mean lots of things. Did you hear the case discussed over there?

Mr. Hayden: How is that?

The Court: Did you hear the case discussed over there?

Mr. Hayden: I did.

The Court: Did it make any impression upon you?

237 Mr. Hayden: Yes, sir.

The Court: Cause you to entertain an opinion about the guilt or innocence of this defendant?

Mr. Hayden: Yes, sir.

The Court: Has that opinion continued to the present time?

Mr. Hayden: Yes, sir.

The Court: Hasn't been changed any?

Mr. Hayden: No, sir.

The Court: You feel that if you entered into the trial of this case as a juror that there would be a certain opinion that would have to be overcome by the evidence in this case?

Mr. Hayden: I wouldn't change my opinion.

The Court: How is that?

Mr. Hayden: I wouldn't change my opinion.

The Court: You wouldn't?

Mr. Hayden: No, sir.

The Court: All right, step down.

The Marshal: Mrs. Elswick.

(The last above named juror called by the Marshal was duly sworn by the Clerk.)

The Court: Mrs. Elswick, you understand the general nature of this case. You heard it explained to the other

members of the panel.

Mrs. Elswick: Yes, sir.

238 The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mrs. Elswick: No, sir.

The Court: Do you know anything about the facts in the case other than what you have learned from casual reading in the newspapers?

Mrs. Elswick: No, sir.

The Court: Have you formed any opinion in this case as to the guilt or innocence of this defendant?

Mrs. Elswick: I have not.

The Court: I ask you and the other lady who took the box, is there any reason why either one of you cannot sit as a juror in this case and render a fair and impartial verdict in accordance with the law and evidence?

Mrs. Chamblee: I am not a bonafide housekeeper, Your Honor.

The Court: Where do you live?

Mrs. Chamblee: I live at 1160 Bardstown Road with my mother and father.

The Court: Do you keep house for them or not?

Mrs. Chamblee: No, I do not.

The Court: They furnish your expenses there?

Mrs. Chamblee: Yes, sir.

The Court: What does counsel say?

Mr. Brown: It is all right with me.

239 Mr. Hogan: I think by her own admission she is not a housekeeper.

The Court: All right, she may be excused. Let's have your name, if you will, please. I understand you have changed it.

Mrs. Chamblee: The name now is Allen—A-l-l-e-n.

The Marshal: Mrs. Elizabeth Lyverse.

Mrs. Lyverse: Here.

(The last above named juror called by the Marshal was duly sworn by the Clerk.)

The Court: Mrs. Lyverse, are you a housekeeper?

Mrs. Lyverse: Yes, sir.

The Court: You have heard me explain this case to

the other members of the panel. Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mrs. Lyverse: No.

The Court: Do you know anything about the facts of the case other than what you have learned through the casual reading of the papers?

Mrs. Lyverse: No, sir.

The Court: Have you formed any opinion in the case?

Mrs. Lyverse: No.

The Court: Is there any reason why you could not sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

240 Mrs. Lyverse: No.

The Court: All right, Mr. Brown.

Mr. Brown: Mrs. Elswick, under the law as given to you by the Court, and if the facts as testified from the witness-stand warrant it, would you recommend the imposition of a death penalty in this case?

Mrs. Elswick: Yes.

Mr. Brown: Mrs. Lyverse, under the law as given to you by the Court, and if the facts as testified to from the witness-stand justify it, would you recommend the sentence of death in this case?

Mrs. Lyverse: Yes.

Mr. Brown: I pass them to you.

Mr. Hogan: Mrs. Elswick, where do you reside?

Mrs. Elswick: Middletown.

Mr. Hogan: Are you married?

Mrs. Elswick: Yes, sir.

Mr. Hogan: What is the business of your husband?

Mrs. Elswick: Architect.

Mr. Hogan: With what religious denomination are you affiliated?

Mrs. Elswick: Unitarian.

Mr. Hogan: Have you any children?

Mrs. Elswick: One daughter.

Mr. Hogan: Mrs. Lyverse, where do you live?

241 Mrs. Lyverse: In Strathmoor, Winston Avenue.

Mr. Hogan: What is the business or profession of

your husband?

Mrs. Lyverse: He is a representative for the International Shoe Company.

Mr. Hogan: Are you a housekeeper?

Mrs. Lyverse: Yes.

Mr. Hogan: How long have you lived in Louisville?

Mrs. Lyverse: All my life.

Mr. Hogan: Do you know Mr. Brown or Mr. Inman?

Mrs. Lyverse: No.

Mr. Hogan: Mrs. Elswick, do you know either of those two gentlemen?

Mrs. Elswick: No, sir.

Mr. Hogan: Now, do you two ladies, Mrs. Elswick and Mrs. Lyverse, or either of you, have any acquaintanceship, social, religious, charitable or any contacts with the members of the Stoll, Speed or Sackett families?

Mrs. Lyverse: I do not.

Mrs. Elswick: I do not.

Mr. Hogan: Do you know any members of those families?

Mrs. Lyverse: No.

Mr. Hogan: Do you or any member of your family have any stock in any company, corporation or association in which the members of the Stoll, Speed and Sackett families are interested?

242 Mrs. Elswick: No, sir.

Mrs. Lyverse: No.

Mr. Hogan: Have you, or either of you, or any member of your household, been employed by the Stoll Oil Company or by the companies or any of them owned and controlled by the Speed, Stoll or Sackett families?

Mrs. Elswick: No, sir.

Mrs. Lyverse: No, sir.

Mr. Hogan: Does there exist in you such a state of mind in regard to this case or this defendant that you cannot try this case impartially and without prejudice to the substantial rights of this defendant?

Mrs. Lyverse: No.

Mrs. Elswick: No.

Mr. Hogan: Have you, or either of you, at any time,

read in the newspapers or magazines an account of this crime?

Mrs. Lyverse: Yes, I have seen articles on it and read them.

Mr. Hogan: Have you done that, Mrs. Elswick?

Mrs. Elswick: Yes.

Mr. Hogan: Did you formulate any opinion after having read those newspaper articles?

Mrs. Lyverse: I didn't.

Mr. Hogan: Did you, Mrs. Elswick?

Mrs. Elswick: No, sir. I accepted them as news,
243 that's all.

Mr. Hogan: You formulated no opinion as to the guilt or innocence of this defendant?

Mrs. Elswick: No.

Mrs. Lyverse: I guess I probably accepted the situation as it seemed to be accepted by the public at that time, I suppose.

Mr. Hogan: How was it accepted by the public at that time?

Mrs. Lyverse: Well, he served a sentence.

Mr. Hogan: Did you accept that, that he was guilty?

Mrs. Lyverse: I suppose I did.

Mr. Hogan: And you have carried that conviction down to the present time?

Mrs. Lyverse: Not with what my understanding of what this trial is about.

Mr. Hogan: At one time you entertained a conviction that he was guilty?

The Court: No, she didn't say conviction.

Mr. Brown: No, she didn't say that.

Mr. Hogan: I will ask you if you did then, Mrs. Lyverse?

Mrs. Lyverse: I stated it exactly the way I felt. I accepted it as news at that time and accepted the fact that he served a sentence, that he was generally con-
244 ceded to be guilty of that offense at that time.

Mr. Hogan: Well, from the fact that you did receive it in that fashion or in that light, did you formulate an opinion of your own?

Mrs. Lyverse: I never thought any more about it.

The Court: You have an open mind on the question now?

Mrs. Lyverse: I do, Your Honor.

Mr. Hogan: Are you, or have you been, or any member of your household been, a stockholder, office holder or director of any of the United States Government corporations or agencies?

Mrs. Lyverse: Are you addressing me or Mrs. Elswick?

Mr. Hogan: Both of you.

Mrs. Lyverse: I have not.

Mrs. Elswick: No, sir.

Mr. Hogan: Did you, or either of you, now or have you been at any time, an employee of the United States?

Have you or any member of your household or families had any business connections or relationship with the United States Government?

Mrs. Lyverse: I have a son training as a pilot in the Air Corps.

Mr. Hogan: I said business relationship, not military affiliation.

245 Mrs. Lyverse: That's all.

Mr. Hogan: Are you now, or have you been at any time, a member of any board or commission?

Mrs. Lyverse: No.

Mr. Hogan: Have you or either of you served upon a jury in this court within the past twelve months, or upon a jury in any circuit court within the past twelve months?

Mrs. Lyverse: No, sir.

Mr. Hogan: Mrs. Elswick?

Mrs. Elswick: No, sir.

Mr. Hogan: Do you, or either of you, entertain any prejudice against one charged with a crime who interposes insanity as a defense?

Mrs. Lyverse: No.

Mr. Hogan: Do you have, or will you have, any prejudice against one interposing a plea of insanity as a defense who thereafter makes a recovery and is restored to sanity?

Mrs. Lyverse: No.

246 Mr. Hogan: If you should, after hearing the evidence and the law as given to you by His Honor, entertain a reasonable doubt, either as to the capacity of the defendant to commit any of the acts charged in the indictment or as to his guilt, would you resolve that doubt as to this defendant and acquit him?

Mrs. Lyverse: I would.

Mr. Hogan: Have you ever sat upon a jury in any court which either recommended or imposed the death penalty?

Mrs. Lyverse: No, I haven't.

Mr. Hogan: Do you believe that because this defendant has been indicted that that is some evidence of his guilt, or would the fact that this defendant has been indicted create in your mind a prejudice, bias or suspicion that he may be guilty?

Mrs. Lyverse: No.

Mr. Hogan: I will pass them to you, Mr. Brown.

The Marshal: Mrs. Lyverse, vacate the box. Mrs. Jessie McCullough.

(Mrs. McCullough was sworn by the Clerk.)

The Court: Mrs. McCullough, you heard me outline the general character of this case which we are about to enter into?

Mrs. McCullough: Yes, sir.

The Court: You understand what it is about?

247 Mrs. McCullough: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mrs. McCullough: No, sir.

The Court: Do you know anything about the facts in the case?

Mrs. McCullough: No, sir.

The Court: Have you formed any opinion in the case one way or the other?

Mrs. McCullough: No, sir.

The Court: Are you a housekeeper?

Mrs. McCullough: No, sir, I am not. I board. I sold my home.

The Court: You do not have any part in the manage-

ment or running of the house in any way?

Mrs. McCullough: Absolutely not.

The Court: All right, Mrs. McCullough, stand aside.

The Marshal: Mrs. Mary Helm.

(Mrs. Helm was sworn by the Clerk.)

The Court: Mrs. Helm, are you a housekeeper?

Mrs. Helm: Yes, I am.

The Court: You understand what this case is about?

Mrs. Helm: I do.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

248 Mrs. Helm: No, sir.

The Court: Do you know anything about the facts of the case?

Mrs. Helm: I do not.

The Court: Have you formed any opinion in the case one way or the other?

Mrs. Helm: No, sir.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict?

Mrs. Helm: No.

The Court: All right, Mr. Brown.

Mr. Brown: Mrs. Helm, under the law as given to you by the Court, if the facts as testified to from the witness stand so justify, could you vote for the imposition of the death penalty?

Mrs. Helm: I could not.

The Court: All right, Mrs. Helm, step down.

The Marshal: Raymond Jones.

(Mr. Jones was sworn by the Clerk.)

The Court: Mr. Jones, you have heard this case outlined to the other members of the panel?

Mr. Jones: Yes, sir.

The Court: Do you understand what the case is about?

Mr. Jones: Yes, sir.

249 The Court: Do you know anything about the facts in this case other than what you may have learned from a casual reading of the papers?

Mr. Jones: No, sir.

The Court: Do you know any members of the family?

Mr. Jones: No, sir.

The Court: Do you know anyone who is connected with the case in any way?

Mr. Jones: No, sir.

The Court: Have you formed any opinion one way or the other about the guilt or innocence of the defendant?

Mr. Jones: No, sir.

The Court: Are you a housekeeper?

Mr. Jones: Yes, sir.

The Court: Is there any reason why you cannot take your seat in the jury box and render a fair and impartial verdict according to the law and the evidence?

Mr. Jones: No, sir.

The Court: Mr. Brown?

Mr. Brown: Mr. Jones, under the law as given to you by the Court, if the facts as testified to from the witness stand justified it, would you vote for the imposition of the death penalty?

Mr. Jones: No, sir.

The Court: You would not?

250 Mr. Jones: No.

The Court: All right, step aside.

The Marshal: That is all.

The Court: Is there any member of the jury panel in the courtroom who has not been called into the box?

(No answer.)

The Court: The Marshal advises that that exhausts the jurors he has available for the present. We have some more coming tomorrow morning at 9:30.

I will admonish the present members of the jury not to discuss this matter among yourselves or with anyone or permit anyone to talk to you or in your presence about it. Avoid contact with anyone who is interested in this case in any way.

We will adjourn until tomorrow morning at 9:30 a. m. The Marshal will have the custody of the jury.

At this point the further proceedings in this case was adjourned until 9:30 a. m. Tuesday morning, November 30, 1943, at which time Court convened, and the following proceedings were had:

251 Convened pursuant to adjournment on Tuesday morning at 9:30 a. m., November 30, 1943, and the following proceedings were had:

The Court: I believe there was one juror who was supposed to be here yesterday that couldn't come. I don't know whether she is here today or not—Mrs. Inez Hutchison.

Mr. Inman: I am informed that Mrs. Hutchison is in the Mayo Hospital.

The Court: They told me that she couldn't come yesterday but would be here today.

Mr. Inman: She is not able to be here.

The Court: All right; strike her name.

The Marshal: All right.

(At this point the Marshal calls the new jurors who have been summoned.)

The Court: Now those of you whose names have just been called, you have been subpoenaed here in order to enable us to select three more jurors to complete the jury in the case which will start immediately thereafter. The Jury will consist, as in all cases, of 12 persons and there will be two alternates to take the place of any juror who might get sick during the trial and not be able to continue. During the period of yesterday we were unable to get more than 11 jurors of the regular 12 jurors. That means
252 that there still remains to be selected by counsel and the Court one regular juror and 2 alternates.

Accordingly, out of the ones who are here this morning, 3 of you will be selected to sit in this case.

The case will probably take a week or maybe longer. It depends on how fast we go. While the case is in progress the jury will be kept together and separated from the public. They will spend the time at the Brown Hotel where quarters have been arranged for them.

I realize that some of you, probably a number of you, may not find jury service right now convenient. It may interfere with your business. It may interfere with your personal pleasure or wishes, but that is usually the case and that is something that we cannot help. We must have qualified jurors to try this case. It is a part of the duty

of every citizen of this State and of this country to serve as a juror when his time comes just as much as it is the duty of any other male citizen to serve as a soldier when his time comes to do so and, regardless of the fact that it is not convenient or it disturbs your business arrangement, it has to be done. If you do not do it, someone else has to do it.

We will go into the various reasons why some of you do not want to serve in a few minutes. I will say first that there are certain qualifications that jurors must have
253 and we will see if all of the ones whose names have just been called are so qualified.

First, the statute says you must be a citizen of the United States and of the State of Kentucky. I assume that all of you are citizens. If anyone is not a citizen, please let that be known now.

Mr. McGruder: I don't know if I am a citizen or not. I moved to Missouri about a year ago with my son.

The Court: You are a natural born American?

Mr. McGruder: Yes, this is my home in Louisville.

The Court: You have always lived in Louisville and you intend to move back to Louisville?

Mr. McGruder: I got the telegram yesterday morning.

The Court: Where?

Mr. McGruder: St. Louis.

The Court: Do you live in St. Louis at the present time?

Mr. McGruder: Yes, I am staying with my son.

The Court: That is your residence?

Mr. McGruder: I am staying with him until the war is over.

The Court: Do you have any residence here?

Mr. McGruder: No.

The Court: Do you own property here?

Mr. McGruder: I did at one time but I don't now.
254 I didn't know what else to do.

The Court: Where do your vote?

Mr. McGruder: That is the question. I took a civil service examination a while back and I claimed Kentucky as my home.

The Court: Where do you claim your residence now? You are the one who knows about that.

Mr. McGruder: I am trying to claim Kentucky.

The Court: It is not a question of what you are trying to claim. It is what the facts are. Have you moved away from here permanently or is it your intention to return here and make it your home?

Mr. McGruder: That is my intention.

The Court: You have never made Missouri your home?

Mr. McGruder: Only temporarily.

The Court: And what is your name?

Mr. McGruder: McGruder.

The Court: Now, is there anyone else who is not a citizen and resident of the Western District of Kentucky?

It is likewise required that all jurors be 21 years of age and a housekeeper of this District. Is there anyone here who is not 21 years of age? or who is not a housekeeper?

Mr. Gates: I don't know.

The Court: What is your name?

255 Mr. Gates: Richard Gates.

The Court: You are the one who wrote me the letter?

Mr. Gates: Yes, sir.

The Court: All right, Mr. Gates, you may be excused.

The Court has been advised in different ways that a number of the people who were subpoenaed here today are sick and incapacitated. Doctors' certificates have been supplied for most of those, one or two of them I believe are even in the hospital. Of course, it is impossible for them to serve. And that reduces the number of jurors we expected to have. Accordingly, it looks like it is going to be necessary to have most of you here today for possible jury service.

I realize that some of you may find that inconvenient. Inconvenience is not going to be an excuse. If it is going to work a real hardship on you, then there may be some reason to excuse you but I can say now, as you can probably realize, that we need you here just as badly as someone else needs you somewhere else. We are trying to get

the case tried and a jury must be had. This case is one that should be tried, and the Court is anxious to get it tried, and I believe all of the parties who are interested in it are likewise anxious to get it started.

However, if there are any of you here by reason
256 of your personal situation at home—it might be that there are some ladies here who have infant children and have no one who can take care of them if they are required to be here for several days, or if someone in the family has sickness of such a nature that you cannot leave them, or that the business situation is so critical that they cannot be spared for a few days, those things will be considered but merely because it will be inconvenient will not be any excuse that the Court will look on with favor.

If there is anyone here who feels that it will be impossible for them to serve, I would like to hear from them now?

Mr. Hayeraft: I am a farmer and there is no one there to do the work.

The Court: You are a farmer?

Mr. Hayeraft: Yes, sir.

The Court: Where?

Mr. Hayeraft: Breckenridge County.

The Court: How large a farm?

Mr. Hayeraft: 250 acres.

The Court: What help have you?

Mr. Hayeraft: My wife, and she has got the rheumatism and she is not able to attend to the stock.

The Court: Any one else?

Mr. Hayeraft: No one else. I have a letter here
257 from the doctor about my wife. Do you want to see it?

The Court: No—you look healthy. Have you got any neighbors who can help you out?

Mr. Hayeraft: No, sir. We got a little girl to stay with her last night.

The Court: All right. Now what is your name?

Mr. Gibson: J. W. Gibson, Willisburg. I have a doctor's certificate. I am sick and not able to sit for a long time.

The Court: Let me see the certificate?

(Mr. Gibson handed the certificate to the Court.)

The Court (After reading it): I don't know that that will be sufficient. We may have to use you anyhow.

Who is the next?

Mr. Early: J. S. Early. I have a certificate.

The Court: All right, let me see it. You are in the same situation as Mr. Gibson. I think maybe you can serve, Mr. Early. These doctors say that they do not think you are able to sit on a jury, but it seems to me you both look pretty able-bodied.

What is your name?

Mr. Houchins: Sam Houchins.

The Court: All right, Mr. Houchins.

Mr. Houchins: I am connected with the Bloomfield warehouse and General Manager, and I have charge
258 of all of the hiring of over 100 men and we are just starting up our business now, and it would be very inconvenient and hard for me to get off.

The Court; Inconvenient?

Mr. Houchins: I don't mean that—nobody to take my place.

The Court: Well what would happen if you were sick?

Mr. Houchins: It would be very serious.

The Court: Would the warehouse close up?

Mr. Houchins: Probably not.

The Court: All right, take your seat.

Who is next?

Mrs. McClarty: I would be glad to serve if I could go home every night, but I am diabetic and I have to take insulin night and morning and I have to be at home so my husband can give it to me.

The Court: Can't you have it at the hotel?

Mrs. McClarty: My husband gives it to me.

The Court: Can't he come to the hotel and give it to you there?

Mrs. McClarty: That will be all right if he will do that.

The Court: All right. Who is next?

Mr. Attkisson: I have a letter for you.

(At this point Mr. Attkisson goes up to the bench

259 and talks to the Court out of hearing.)

The Court: Anyone else?

Mr. Dacon: Earl Dacon.

The Court: What is your situation?

Mr. Dacon: I am a farmer and I have a mother 84 years old today, and I have a sick wife at home who has been sick with rheumaitsm eleven weeks under the doctor's care, and I have 90 head of stock with only one tenant and owing to the water situation it is impossible to get anyone to help.

The Court: How old are you?

Mr. Dacon: 58.

The Court: Is that all?

Mr. McTighe: J. M. McTighe.

The Court: What is your situation?

Mr. McTighe: I have a letter here.

The Court: Are you sick?

Mr. McTighe: No (handing letter to the Court).

The Court: That is another situation. I don't know what would happen if you were to die. That company would be in a bad fix, wouldn't it?

Mr. McTighe: We had another man but he was drafted.

The Court: The company would have to run if you were not there, wouldn't it?

Mr. McTighe: Yes, sir.

260 The Court: Well, we will see about it.

Anyone else?

Mr. Money: Arle C. Money.

The Court: And what is your situation?

Mr. Money: We just sold our farm and we have to give possession the first of the year, and we have to have a sale and we have about 8 acres of tobacco to strip, too.

The Court: Who is "we"?

Mr. Money: My brother and myself.

The Court: Can't he do it?

Mr. Money: Not hardly.

The Court: When did you serve here last?

Mr. Money: In the spring sometime.

The Court: Not within the last year?

Mr. Money: No.

The Court: And what is your name?

Mr. McElroy: Rob McElroy.

The Court: What is your situation?

Mr. McElroy: I am on a farm six miles out with a wife and 2 small children, with the work to do and the tobacco crop to strip out.

The Court: How large a farm?

Mr. McElroy: 230.

The Court: What help have you?

Mr. McElroy: I have 2 tenants but they are not
261 hired men—one of them does not live on the place, and they don't tend to the stock.

The Court: Then they can take care of the stock can't they while you are gone?

Mr. McElroy: I left word there for them to but I don't know that they will at all, and I have not made any arrangements for my wife and children.

The Court: What kind of arrangements?

Mr. McElroy: Arrangements for them to stay somewhere. They will not stay there alone.

The Court: Can they come to Louisville?

Mr. McElroy: Oh yes.

The Court: Or go to some friend's house?

Mr. McElroy: Yes, they could move to Springfield.

The Court: You don't have to be there for them to do that, do you?

Mr. McElroy: It is not absolutely necessary.

The Court: All right. Is that all?

Mr. Crain: John W. Crain.

The Court: What is your situation?

Mr. Crain: I have a sick child who has been sick ever since the 17th of September and he has convulsions and he has them so badly we have to give him shots and none of the rest of the family can give him the shots except me, and I live 8 mile from town and I have a large farm
262 and no one to see after it.

The Court: How large a farm?

Mr. Crain: 140 acres.

The Court: How much help do you have?

Mr. Crain: Only small boys.

The Court: How small?

Mr. Crain: One 12 and the other 14.

The Court: They go to school, do they?

Mr. Crain: Yes, sir.

The Court: All right, have a seat.

Now, is there another man?

Mr. Crume: Logan Crume.

The Court: What is your situation?

Mr. Crume: I am a farmer.

The Court: How big a farm do you run?

Mr. Crume: 415.

The Court: Where is it?

Mr. Crume: 2 miles from Springfield.

The Court: How much help have you?

Mr. Crume: 2 tenants.

The Court: Couldn't they get along without you for a few days?

Mr. Crume: They might if I could get them to haul the stock water.

The Court: Can't you get them to do that?

263 Mr. Crume: Neither one of them can drive a truck and we have to use a truck for that. If they could get a team to haul it by wagon they could.

The Court: All right, have a seat. And what is your name?

Mr. Argenbright: Russell Argenbright.

The Court: What is your situation, Mr. Argenbright?

Mr. Argenbright: I own and operate a service station at Lebanon Junction and I don't have anybody to work for me, and I would have to close up. I have closed up 2 days already.

The Court: What hours do you operate down there?

Mr. Argenbright: 8 in the morning until about 8:30 at night.

The Court: Are you there all that time?

Mr. Argenbright: Yes, except an hour for dinner.

The Court: What do you do on that hour? Close up?

Mr. Argenbright: Yes, close up.

The Court: You haven't any help at all?

Mr. Argenbright: I did have up until 2 weeks ago and

the boy quit and went to work on a mail truck.

The Court: All right, have a seat.

What is your name?

Mr. Whitehead: Fred Whitehead.

The Court: What is your situation, Mr. Whitehead?

Mr. Whitehead: I have charge of the Lebanon
264 Junction Water Works, and I am the sole employee.

The Court: What would Lebanon Junction do if you got sick?

Mr. Whitehead: I don't know. I am the only one that has ever operated the plant. The water bills are due now tomorrow, and we are supposed to be checking the meters today.

The Court: Do you do all of that?

Mr. Whitehead: Yes, sir.

The Court: Do you read all the meters and send out all the water bills?

Mr. Whitehead: Yes, sir.

The Court: Don't you have any clerical assistance?

Mr. Whitehead: No, sir.

The Court: Do you have a Mayor down there?

Mr. Whitehead: Yes.

The Court: What is the Mayor going to do if you got sick sometime?

Mr. Whitehead: I don't know.

The Court: Hasn't that thought ever occurred to him?

Mr. Whitehead: He doesn't work for the city—he is a railroad man.

The Court: He is the Mayor of Lebanon, isn't he?

Mr. Whitehead: Yes—and he has a sick wife, too.

The Court: All right, take a seat.

265 The Marshal: I will call those who did not answer (calling jurors).

The Court: Now those of you who have asked to be excused, I would like to excuse all of you if we could. I think what we will do is to give you a tentative excuse and ask you to still stay in the courtroom. If we can get our jury with what is remaining, we will not have to have you, but if we cannot get a jury with what is remaining, we will have to call on some of you at least, to help out.

Accordingly, you will be temporarily excused, but you should remain here in the courtroom to see if we need you before the morning or the day is over.

Mr. Marshal, those people who are in Louisville who did not answer, W. H. Bowman, Jr., J. N. Francis—I wish you would get in touch with them and find out why they are not here.

The Marshal: Yes, sir, there are 5 of them here in Louisville.

The Court: Is counsel ready to proceed?

Mr. Brown: Yes, Your Honor.

Mr. Hogan: Yes, Your Honor.

The Marshal: R. L. Woolfolk.

(Mr. Woolfolk was sworn by the Clerk.)

The Court: Mr. Woolfolk, I will state this case to you and also to the other members of the jury panel so
266 that you can all listen at this time and understand what the case is about and the general nature of the questions that might be asked you and the other prospective jurors.

This indictment was returned by the Grand Jury for the Western District of Kentucky on October 20, 1934, against the defendant, Thomas Henry Robinson, Jr., who is sitting there in the middle at the table to my left.

The second count of his indictment, which is the only count that this jury will be concerned with, charges that on or about the 10th of October 1934, in Jefferson County, Kentucky, the defendant, Thomas Henry Robinson Jr., did transport from Louisville, Kentucky, to Indianapolis, Indiana, Mrs. Alice Stoll who was not a minor and who was not transported by her parents but who had been unlawfully seized and kidnapped and carried away from her home by the defendant and held for ransom or reward; and that the defendant Robinson did, while Mrs. Alice Stoll was in his custody, beat and harm her and did not liberate her unharmed.

I might say, also, as I told the other members of the panel yesterday, the jurors should keep this in mind in answering the questions which will be asked them, that in the Federal Court the procedure is different from what it

is in the State court. In the State court the jury usually not only determines whether or not the defendant is
267 guilty or not guilty, but if they return a verdict of guilty the jury fixes the punishment. However, in the Federal Court it is usually within the province of the jury to determine only whether or not the defendant is guilty or not guilty, and if the jury returns a verdict of guilty, it is the duty of the Court to fix the punishment.

Now, the particular statute which is involved in this case, the federal statute, changes that just a little and provides that although it is still the duty of the Court to fix the punishment in the event a verdict of guilty is returned, but the jury may, if they think it is advisable in their judgment and discretion, recommend the death penalty. Such a recommendation is not binding upon the Court but it can be made by the jury and the Court can accept it if it feels that such recommendation, if made, should be accepted.

Accordingly, tha will probably be one of the questions which will be before the jury if and when the case goes to them for consideration. You will probably be asked by counsel whether or not, if the evidence warrants it and the law justified it, you would be willing to make such a recommendation, and in answering that question I wish you to know the law in the situation, viz: That such a recommendation can be made by the jury which may or may not be accepted by the Court.

268 Likewise there are some general principles of law that might be brought to your attention by questions of counsel and about which the Court would instruct you at the end of the case, viz: that an indictment which has been brought by a Grand Jury is not to be considered as evidence in the case; it is not to be considered by a juror as evidence of the defendant's guilt, but is to be considered merely as the charge of the government, and to be disregarded as evidence in any way upon the consideration of the case.

Also, it is a fundamental principle in criminal law, both in the federal court or any other court, that if there is any reasonable doubt in the mind of a juror about the guilt of the defendant, such doubt should be resolved in favor of

the defendant, and a verdict of not guilty returned. The Court will so advise you more in detail when the instructions are given; but in view of the questions which have been asked other jurors, and which will probably be asked these jurors, I think it is advisable for you jurors to know those principles before we begin to ask the questions.

Now, are you related in any way by blood or marriage to the defendant, Thomas Henry Robinson Jr.?

Mr. Woolfolk: No, sir.

The Court: Do you know anything about the
269 facts of this case other than what you might have acquired from a casual reading of the newspapers?

Mr. Woolfolk: No, sir.

The Court: You have had no connection with any of the parties interested in this case?

Mr. Woolfolk: No, sir.

The Court: You have formed no opinion in the case at all?

Mr. Woolfolk: No.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Woolfolk: No, sir.

The Court: All right, Mr. Brown.

Mr. Brown: Where are you from?

Mr. Woolfolk: Brandenburg.

Mr. Brown: Meade County?

Mr. Woolfolk: Yes, sir.

Mr. Brown: What is your business?

Mr. Woolfolk: Farming.

Mr. Brown: What size farm do you have?

Mr. Woolfolk: 125.

Mr. Brown: Are you married?

Mr. Woolfolk: Yes.

270 Mr. Brown: What family do you have?

Mr. Woolfolk: A wife and 5 children.

Mr. Brown: How long have you lived in Meade County?

Mr. Woolfolk: All my life—born there.

Mr. Brown: Mr. Woolfolk, if under the law as given

to you by the Court, and if the facts as testified to from the witness stand justify it, could you recommend the death penalty in this case?

Mr. Woolfolk: Well I don't know.

Mr. Brown: Well, let's see—perhaps I didn't phrase the question properly.

The Court: Would you have any conscientious scruples against recommending the death penalty if the law authorizes the jury to do so and the facts and evidence as given from the witness stand justify it? This does not mean that you would have to do it, or that your recommendation would be accepted by the Court?

Mr. Woolfolk: No.

Mr. Brown: I pass them to you.

Mr. Hogan: Mr. Woolfolk, with what religious denomination are you affiliated?

Mr. Woolfolk: Methodist.

Mr. Hogan: What are the ages of your 5 children?

Mr. Woolfolk: The oldest is 17 and the youngest
271 is 4.

Mr. Hogan: Are you related by the ties of blood or marriage to any member of the Stoll or the Speed or Sackett families?

Mr. Woolfolk: No.

Mr. Hogan: Do you know any members of those three families?

Mr. Woolfolk: No.

Mr. Hogan: Have you, or any member of your family, ever had any business transactions with any members of the Stoll, Speed or Sackett families?

Mr. Woolfolk: No, sir.

Mr. Hogan: Are you acquainted with Mr. Brown who has just interrogated you?

Mr. Woolfolk: No, sir.

Mr. Hogan: Have you ever been employed by the government?

Mr. Woolfolk: No, sir.

Mr. Hogan: Has any member of your family ever been employed by the government?

Mr. Woolfolk: I have an Uncle who had been, but he

is retired now.

Mr. Hogan: What position did he have?

Mr. Woolfolk: He was a veterinarian for the meat inspectors, in the office of Animal Husbandry.

272 Mr. Hogan: Have you ever had any business with the government?

Mr. Woolfolk: No.

Mr. Hogan: Selling the government produce?

Mr. Woolfolk: No, sir.

Mr. Hogan: Do you receive the crop cut-out checks?

Mr. Woolfolk: Yes, sir.

Mr. Hogan: Have you read the newspapers about this matter?

Mr. Woolfolk: Not only what I read yesterday about the jury and all.

Mr. Hogan: Nine years ago when it was in the newspapers, did you read about it then?

Mr. Woolfolk: I might have then. I don't remember anything about it much in particular.

Mr. Hogan: Did you formulate any opinion about the guilt or innocence of this defendant at that time?

Mr. Woolfolk: No, sir.

Mr. Hogan: Or at any time after that?

Mr. Woolfolk: No.

Mr. Hogan: Are you on any Board now, or have you ever been on any board or commission of the government?

Mr. Woolfolk: No.

Mr. Hogan: Have you served upon a jury within the past 12 months in a circuit court of your county, or

273 in the federal court?

Mr. Woolfolk: I served on my circuit court last September a year ago—pettit jury.

Mr. Hogan: In Meade County?

Mr. Woolfolk: Yes.

Mr. Hogan: Do you know Mr. Milton Whitworth?

Mr. Woolfolk: Yes.

Mr. Hogan: Do you know Percy Shumate?

Mr. Woolfolk: Yes, sir.

Mr. Hogan: Do you entertain any prejudice against one charged with a crime who interposes insanity as a de-

fense?

Mr. Woolfolk: How was that?

Mr. Hogan: Do you have any prejudice against one who pleads insanity when charged with a crime?

Mr. Woolfolk: No, sir, I suppose not.

Mr. Hogan: Well are you fixed in your mind about that, or is there some doubt in your mind as to whether or not you have prejudice?

Mr. Woolfolk: I don't think so.

Mr. Hogan: I would like to determine, Mr. Woolfolk, whether you are a person who believes that one charged with a crime and pleads insanity does so for the purpose of escaping punishment?

Mr. Woolfolk: Sometimes I think that might be so.

Mr. Hogan: You have had that opinion at times?

274 Mr. Woolfolk: At times—yes.

Mr. Hogan: And do you have that opinion now?

Mr. Woolfolk: I cannot say that I do. I don't know anything about this.

Mr. Hogan: All right.

The Court: It would depend on the facts in each case. Is that right?

Mr. Woolfolk: Yes, that's right.

Mr. Hogan: Do you have or would you have any prejudice against one pleading insanity as a defense to the crime charged in the indictment if it should be thereafter shown that he has been restored to sanity?

Mr. Woolfolk: I didn't understand you exactly.

Mr. Hogan: Perhaps I did not make myself as clear as I should have. Would you have any prejudice if it was shown on the trial in this case that this defendant at one time had been legally insane and if he should plead that insanity as a defense to the matters set up in this indictment, but if it had been later shown that he had been legally restored to sanity?

Mr. Woolfolk: No, sir, I don't believe I would.

Mr. Hogan: Mr. Woolfolk, if, after hearing the evidence and the law as given to you by His Honor in this case, you should entertain a reasonable doubt as to the capacity of this defendant to commit the crime charged

275 in the indictment, would you resolve that doubt in favor of this defendant and acquit him?

Mr. Woolfolk: I don't know.

The Court: Well I think I tried to explain that to him. Mr. Woolfolk, if the Court should instruct you as a matter of law that if there is a reasonable doubt of the guilt of the defendant you should find him not guilty, could you follow that instruction?

Mr. Woolfolk: Yes, sir.

Mr. Hogan: Now, if there should be a reasonable doubt in your mind, after hearing the evidence and the law, as to the guilt of this defendant, would you resolve that doubt that you have or should have in your mind, or would have, in favor of the defendant, and acquit him?

The Court: Hasn't he just answered that?

Mr. Brown: He said "yes sir."

Mr. Hogan: I thought he didn't understand the type of question you were explaining to him.

Mr. Woolfolk: Yes, sir.

Mr. Hogan: Would you, if you entertained a reasonable doubt as to his capacity to commit a crime, resolve the doubt and acquit him?

The Court: It all raises the same question, Mr. Hogan, and I tell this juror and the others that it is their duty to follow the Court's instructions. The Court will

276 instruct them if there is any reasonable doubt about the person committing the crime, it is their duty to return a verdict of not guilty and if you received such instruction would you follow it?

Mr. Woolfolk: Yes, sir.

Mr. Hogan: Have you ever sat upon a jury in any court which either recommended or imposed the death penalty?

Mr. Woolfolk: No, sir.

Mr. Hogan: Do you believe that because the defendant has been indicted that that is some evidence of his guilt?

Mr. Woolfolk: I don't know.

The Court: That, again, is a matter that I tried to explain before the questions were asked.

The Court will instruct you that the indictment is not to be considered as any evidence of his guilt. I tell all the

jurors that they will not consider the indictment as any evidence at all. You will be instructed to consider only the evidence as given on this trial, and again the question comes down to: Will you follow the instructions when you are so instructed by the Court?

Mr. Woolfolk: Yes, sir.

Mr. Hogan: I pass them to you.

Mr. Brown: We accept the jury.

The Marshal: Vacate the box, Mr. Woolfolk. C. O. Brent.

277 (Mr. Brent was sworn by the Clerk.)

The Court: Mr. Brent you heard me explain what this case was about, in a general way?

Mr. Brent: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Brent: No, sir.

The Court: Do you know anything about the facts of the case other than what you may have acquired from a casual reading the newspapers?

Mr. Brent: No, sir.

The Court: Have you formed any fixed opinion of the guilt or innocence of this defendant?

Mr. Brent: No, sir.

The Court: Is there any reason why you cannot sit on this jury and render a fair and impartial verdict according to the law and the evidence presented?

Mr. Brent: No, except I would not want to recommend the death penalty is the only thing I know.

The Court: You mean you would have conscientious scruples against doing it? Maybe you would not want to, but would your situation be that you couldn't do it even if the law and the evidence required it?

Mr. Brent: Yes.

The Court: All right, you may be excused.

278 The Marshal: Frank Bury.

(Mr. Bury was sworn by the Clerk.)

The Court: Mr. Bury, you heard me explain this case to the other members of the panel?

Mr. Bury: Yes, sir.

The Court: You understand what the case is about?

Mr. Bury: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson Jr.?

Mr. Bury: No, sir.

The Court: Do you know anything about the facts of the case?

Mr. Bury: Only what I read in the papers.

The Court: Have you formed any fixed opinion as to the guilt or innocence of this defendant?

Mr. Bury: Yes, sir.

The Court: You mean that you have that opinion now?

Mr. Bury: Yes, sir.

The Court: Do you mean that you would enter the box with that opinion in your mind?

Mr. Bury: Yes, sir.

The Court: All right, you may be excused.

The Marshal: Robert Easton.

(Mr. Easton was sworn by the Clerk.)

The Court: Mr. Easton, you have heard me ex-
279 plain the case to the other members of the panel?

Mr. Easton: Yes, sir.

The Court: You understand what the case is about?

Mr. Easton: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Easton: No, sir.

The Court: Do you know anything about the facts of the case other than what you may have acquired by a casual reading of the newspapers?

Mr. Easton: No, sir.

The Court: Have you any fixed opinion in this case about the guilt or innocence of this defendant?

Mr. Easton: I do not believe in capital punishment.

The Court: You mean that even if the law of this case authorizes capital punishment and if the facts and the evidence justify it, you would refuse to recommend the death penalty?

Mr. Easton: Yes, sir.

The Court: All right, you may be excused.

The Marshal: Jake Hardesty.

(Mr. Hardesty was sworn by the Clerk.)

The Court: Mr. Hardesty, you heard me explain this case to the other members of the panel?

Mr. Hardesty: Yes, sir.

280 The Court: You understand what the case is about?

Mr. Hardesty: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson Jr.?

Mr. Hardesty: No, sir.

The Court: Do you know anything about the facts of the case other than what you may have from a casual reading of the papers?

Mr. Hardesty: No, sir.

The Court: Have you formed any fixed opinion in the case one way or the other?

Mr. Hardesty: No, sir.

The Court: Is there any reason why you cannot sit and serve as a juror in this case and render a fair and impartial verdict according to the law and the evidence in this case?

Mr. Hardesty: I don't know whether I could give him the death penalty or not.

The Court: The question is if the law authorizes it and the facts and evidence as given to you from the witness stand justify it, would you decline to recommend it?

Mr. Hardesty: Yes, sir.

The Court: All right, you may be excused.

The Marshal: James F. Doyle.

(Mr. Doyle was sworn by the Clerk.)

281 The Court: Mr. Doyle, you heard me explain this case to the other members of the jury panel?

Mr. Doyle: Yes, sir.

The Court: You understand what the case is about?

Mr. Doyle: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Doyle: No, sir.

The Court: Do you know anything about the facts of

the case other than what you may have casually learned?

Mr. Doyle: No, sir.

The Court: Have you formed any fixed opinion about the guilt or innocence of this defendant?

Mr. Doyle: No, sir.

The Court: Is there any reason why you cannot sit on this jury and render a fair and impartial verdict according to the law and evidence?

Mr. Doyle: No, sir.

The Court: All right, Mr. Brown.

Mr. Brown: Where do you live?

Mr. Doyle: 123 Pennsylvania Avenue.

Mr. Brown: And your business?

Mr. Doyle: Manager of a paint store.

Mr. Brown: Here in the City of Louisville?

282 Mr. Doyle: Yes, sir.

Mr. Brown: Are you married?

Mr. Doyle: Yes, sir.

Mr. Brown: Any family?

Mr. Doyle: Three children.

Mr. Brown: Their ages?

Mr. Doyle: I have 3 boys, 12, one 8 and one 3.

Mr. Brown: Have you lived in the City of Louisville all of your life?

Mr. Doyle: No, sir.

Mr. Brown: How long have you lived in the City of Louisville?

Mr. Doyle: 3 years.

Mr. Brown: Where are you from?

Mr. Doyle: Philadelphia, Pennsylvania.

Mr. Brown: Have you ever been represented in any legal matters by counsel for the defendant, Mr. Robert E. Hogan?

Mr. Doyle: No, sir.

Mr. Brown: Do you know Mr. Hogan?

Mr. Doyle: No, sir.

Mr. Brown: Mr. Doyle, under the law as given to you by the Court, and if the facts as testified to from the witness stand justify it, could you recommend the death penalty in this case?

283 Mr. Doyle: I am afraid not, sir.

The Court: You mean that, regardless of the law and the evidence, you would decline to do so?

Mr. Doyle: I would decline, yes, sir.

The Court: All right, Mr. Doyle, step down.

The Marshal: Burke Abell.

(Mr. Abell was sworn by the Clerk.)

The Court: Mr. Abell, you heard me explain this case to the other members of the jury panel?

Mr. Abell: Yes, sir.

The Court: You understand what this case is about?

Mr. Abell: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson Jr.?

Mr. Abell: No, sir.

The Court: Do you know anything about the facts of the case?

Mr. Abell: Only just what I read.

The Court: Have you formed any fixed opinion as to the guilt or innocence of this defendant?

Mr. Abell: I couldn't say that I have. I think I could try the case according to the evidence.

The Court: You have no fixed opinion at the present time?

Mr. Abell: No, sir.

284 The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence as it will be presented to you?

Mr. Abell: Well, Judge, in a way I have conscientious scruples against death.

The Court: Now I will explain to you, and to the other members of the panel who may not have understood it, that the province of a jury in this Court in this case would be first to decide whether or not the defendant was guilty or not guilty, and then secondly if they should decide that the defendant was guilty, whether they would recommend the death penalty but whether the death penalty would be given would be up to the Court. The recommendation is only a recommendation which the Court can or can not fol-

low, as it seems advisable.

Now, under those conditions, and if the law justifies it and if the facts and the evidence as presented warranted such recommendation, would you decline to give such recommendation?

Mr. Abell: I don't believe I would.

The Court: You mean you would decline?

Mr. Abell: I have conscientious scruples, in a way.

The Court: Do you mean that you would decline to make such recommendation?

285 Mr. Abell: Yes.

The Court: All right, Mr. Abell, you may step down.

The Marshal: Frank Eicher.

(Mr. Eicher was sworn by the Clerk.)

The Court: Mr. Eicher, you heard me explain this case to the other members of the panel?

Mr. Eicher: Yes, sir.

The Court: Are you related by blood or marriage to the defendant in this case, Thomas Henry Robinson Jr.?

Mr. Eicher: No, sir.

The Court: Do you know anything about the facts of the case?

Mr. Eicher: No, sir, only what I read in the papers.

The Court: Have you formed any fixed opinion about the guilt or innocence of this defendant?

Mr. Eicher: No, sir.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence as it will be presented to you?

Mr. Eicher: No, I don't think so.

The Court: You think you can act as a fair and impartial juror?

Mr. Eicher: Yes, sir.

The Court: All right, Mr. Brown.

286 Mr. Brown: Mr. Eicher, where do you live?

Mr. Eicher: I live out on the Taylorsville Road, near Bowman Field.

Mr. Brown: What is your business?

Mr. Eicher: Truck gardener.

Mr. Brown: How long have you lived in that neighborhood?

Mr. Eicher: About 40 years.

Mr. Brown: Are you married?

Mr. Eicher: Yes, sir.

Mr. Brown: Have you any family?

Mr. Eicher: Yes, sir.

Mr. Brown: How many in your family?

Mr. Eicher: I have got 5 children.

Mr. Brown: Do you know counsel for the defendant, Robert E. Hogan?

Mr. Eicher: Who?

The Court: This gentleman over here sitting there looking at you?

Mr. Eicher: No, I do not.

Mr. Brown: Mr. Eicher, if under the law as given to you by the Court, and if the facts as testified to from the witness stand warranted it, could you recommend the death penalty?

Mr. Eicher: No, I wouldn't think so.

287 The Court: You mean that you would decline to do so even if the law and the facts warrant it?

Mr. Eicher: Yes, sir.

The Court: All right, step down.

The Marshall: Dave Musselman.

(The Clerk swore Mr. Musselman.)

The Court: Mr. Musselman, you have heard me explain the case to the other members of the panel?

Mr. Musselman: Yes, sir.

The Court: You understand what it is about?

Mr. Musselman: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Musselman: No, sir.

The Court: Do you know anything about the facts of the case other than what you may have acquired by casual conversation or reading the newspapers?

Mr. Musselman: Well, of course, I talked it a lot around at the time.

The Court: Just with your friends?

Mr. Musselman: Well I talked with one of the interested parties.

The Court: Did it cause you to have any fixed opinion in this case as to the guilt or innocence of this defendant?

288 Mr. Musselman: I believe at the time it did—I don't know how it would be now.

The Court: Do you have any opinion at all in the matter?

Mr. Musselman: I talked it over with Bill Stoll at the time, and I figured what he told me was right.

The Court: Regardless of what happened then, do you now have a fixed opinion in your mind?

Mr. Musselman: I think I could come in here with an open mind.

The Court: Is there any reason why you cannot sit on this jury and render a fair and impartial verdict according to the law and the evidence?

Mr. Musselman: No.

The Court: All right, Mr. Brown.

Mr. Brown: Where do you live, Mr. Musselman?

Mr. Musselman: 2110 Lauderdale.

Mr. Brown: What is your business?

Mr. Musselman: Wholesale lumber.

Mr. Brown: Where is your place of business located?

Mr. Musselman: 3d and Broadway—Breslin Building.

Mr. Brown: Are you married?

Mr. Musselman: Yes; 5 children.

289 Mr. Brown: Mr. Musselman, under the law as given to you by the Court and if the facts as testified to from the witness stand justify it, could you recommend the death penalty in this case?

Mr. Musselman: Yes, sir.

Mr. Brown: I pass them to you.

Mr. Hogan: What is the nature and extent, Mr. Musselman, of your acquaintance with Mr. William Stoll?

Mr. Musselman: Well I have known him for several years—8 or 10 years. I wouldn't call him a close friend or anything, but just an acquaintance.

Mr. Hogan: Would it embarrass or humiliate you to

sit upon a jury in which one of the members of his family is the chief prosecuting witness?

Mr. Musselman: Yes.

Mr. Hogan: At the time you say you formed an opinion after talking to Mr. Stoll, was that opinion unfavorable to the defendant?

Mr. Musselman: Yes.

Mr. Hogan: Do you still carry that opinion with you now?

Mr. Musselman: I always felt like I got the right dope on it.

The Court: I understood you to say that you had an open mind?

290 Mr. Musselman: I still carry that opinion—

The Court (Interrupting): The point is this: Not whether or not you have to have evidence to overturn the opinion you have, but whether or not you enter this case with a free and open mind, without any prejudice one way or the other. If you have an opinion which would have to be overturned by the defendant, then you start out as a partial juror. But we have to find out whether or not your mind is open at the present time.

Mr. Musselman: Well I feel in a way that they would have to show me.

The Court: In other words, you enter the jury box with an opinion unfavorable to the defendant?

Mr. Musselman: I feel that way but at the same time I have an open mind.

The Court: Well it can't be both. You will be excused for cause.

The Marshal: Mark Spalding.

(Mr. Spalding was sworn by the Clerk.)

The Court: Mr. Spalding, you have heard me explain this case to the other members of the panel?

Mr. Spalding: Yes, sir.

The Court: You understand what the case is about?

Mr. Spalding: Yes, sir.

The Court: Are you related by blood or marriage

291 to the defendant, Thomas Henry Robinson, Jr.?

Mr. Spalding: No, sir.

The Court: Do you know anything about the facts of this case?

Mr. Spalding: No, only what I read back yonder.

The Court: A casual reading of the newspapers?

Mr. Spalding: Yes.

The Court: Have you formed any fixed opinion as to the guilt or innocence of this defendant?

Mr. Spalding: No, sir.

The Court: Is there any reason why you cannot sit on this jury and render a fair and impartial verdict according to the law and the evidence?

Mr. Spalding: Yes, sir, I have conscientious scruples about the death penalty.

The Court: You take the position then that even if the law authorizes it and the evidence from the witness stand justifies it you would decline to recommend the death penalty?

Mr. Spalding: Yes, sir.

The Court: Does the government challenge for cause?

Mr. Brown: Yes.

The Court: All right, step down.

The Marshal: R. M. Wathen.

292 (Mr. Wathen was sworn by the Clerk.)

The Court: Mr. Wathen, you understand what the case is about from my stating the case to the other members of the panel?

Mr. Wathen: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Wathen: No, sir.

The Court: Do you know anything about the facts of this case other than from your casual reading of the newspapers?

Mr. Wathen: Yes, sir.

The Court: You do know something about it?

Mr. Wathen: Yes, sir.

The Court: What is the nature of your information or the source of it?

Mr. Wathen: My first cousin, Mr. Richard Condon, is married to Mr. Stoll's sister.

The Court: And that gives you an interest in the case which you feel would make you a prejudiced juror?

Mr. Wathen: Yes, sir.

The Court: All right, step aside.

293 The Marshal: Richard Proctor.

(The last named juror called by the Marshal was duly sworn by the Clerk.)

The Court: Mr. Proctor, you understand what this case is about?

Mr. Proctor: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Proctor: No, sir.

The Court: Do you know anything about the facts of the case?

Mr. Proctor: No, sir.

The Court: Have you formed any fixed opinion as to the guilt or innocence of this defendant?

Mr. Proctor: No, sir, none whatever.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and evidence?

Mr. Proctor: No, sir.

The Court: All right, Mr. Brown.

Mr. Brown: Mr. Proctor, where are you from?

Mr. Proctor: Oldham County, Kentucky.

Mr. Brown: Are you married, Mr. Proctor?

Mr. Proctor: Yes, sir.

Mr. Brown: What size family have you?

294 Mr. Proctor: Four children.

Mr. Brown: Mr. Proctor, under the law as given to you by the Court, and if the facts as testified to from the witness-stand justify it, could you recommend a death penalty?

Mr. Proctor: Yes, sir.

Mr. Brown: Pass the juror.

Mr. Hogan: What is your business?

Mr. Proctor: Farmer.

Mr. Hogan: What is the size of your farm, sir?

Mr. Proctor: Well, I just sold—I was running about

500 acres, that's the reason I sold it.

Mr. Hogan: What business do you plan to enter at this time?

Mr. Proctor: Well, am just kind of broke down in health, and have got a little seven acre farm in LaGrange.

Mr. Hogan: Have you ever held any public office in Oldham County?

Mr. Proctor: No, sir; nothing only just election officer, something like that.

Mr. Hogan: What is your politics?

Mr. Proctor: Democrat.

Mr. Hogan: What is your religious belief?

Mr. Proctor: Baptist.

Mr. Hogan: Are you related to any member of the Stoll, Speed or Sackett families?

295 Mr. Proctor: No, sir.

Mr. Hogan: Do you know Mr. Brown who just interrogated you?

Mr. Proctor: No, sir.

Mr. Hogan: Do you know Mr. Inman?

Mr. Proctor: No, sir.

Mr. Hogan: Have any members of your family been employed by the United States Government?

Mr. Proctor: Nothing only my son. He is a metallurgist.

Mr. Hogan: Employed by the Government?

Mr. Proctor: Yes, sir.

Mr. Hogan: Where is he employed?

Mr. Proctor: Lexington.

Mr. Hogan: Would that fact influence your verdict in this case?

Mr. Proctor: Not a bit; none whatever.

Mr. Hogan: Have you served upon a jury in the Circuit Court of Oldham County or in this Federal Court within the past twelve months?

Mr. Proctor: No, sir.

Mr. Hogan: Are you a stockholder or director in any of the companies or corporations in which the members of the Stoll, Speed or Sackett families have any interest?

Mr. Proctor: No, sir.

296 Mr. Hogan: Do you receive the cut-out payments from the Government?

Mr. Proctor: Which?

Mr. Hogan: Do you receive cut-out payments from the Government?

Mr. Proctor: When I owned my farm I did.

Mr. Hogan: You just recently sold your farm?

Mr. Proctor: Yes, sir.

Mr. Hogan: How old are your children?

Mr. Proctor: The oldest one is thirty-eight and the youngest twenty-two.

Mr. Hogan: What business is your thirty-eight year old child in?

Mr. Proctor: That's my son in Lexington.

Mr. Hogan: And what business are your other children in?

Mr. Proctor: They are farmers, except one. She was working here, I believe at Curtiss-Wright.

Mr. Hogan: Have you read the newspapers about this matter?

Mr. Proctor: Well, quite awhile ago I read the newspapers some, but not much because I was busy on the farm and didn't read much.

Mr. Hogan: Have you ever at any time formulated an opinion about the guilt or innocence of this defendant?

297 Mr. Proctor: No, sir, I don't know as I ever made any statement or formed any opinion.

Mr. Hogan: Has anybody ever discussed this case with you?

Mr. Proctor: No, sir.

Mr. Hogan: Have you ever heard any rumors about this case?

Mr. Proctor: Nothing, only just general topics, a person probably would speak about it—quite awhile ago, nothing lately.

Mr. Hogan: From rumors that you say you heard, did you formulate any opinion about those?

Mr. Proctor: No, sir.

Mr. Hogan: Did you read the article in the Roto-

Magazine Section of the Courier-Journal of November 21st, 1943, about this case?

Mr. Proctor: No, sir.

Mr. Hogan: Do you have any prejudice against one charged with a crime who pleads insanity as a defense?

Mr. Proctor: No, sir.

Mr. Hogan: Do you believe that one who pleads insanity as a defense to the crime charged does so for the purpose of escaping punishment?

Mr. Proctor: I just don't exactly catch you there.

Mr. Hogan: Would the reporter mind reading that back?

298 (Question read by the reporter.)

Mr. Brown: I am going to suggest that that's an unfair question. How can anyone have any belief about it until they have heard the evidence on it?

Mr. Hogan: He may have a general opinion about it.

Mr. Brown: You didn't ask about the general opinion.

Mr. Hogan: Do you have the general belief or opinion that one who is charged with a crime and pleads insanity as a defense, generally or usually does so to escape punishment?

Mr. Proctor: Oh, not necessarily so; no.

Mr. Hogan: If it is proven to your satisfaction that this defendant was innocent, would you accept that as a defense to the crime charged?

Mr. Proctor: If the evidence proved that he was innocent I would, yes.

Mr. Hogan: Do you or would you have any prejudice against this defendant if he should enter a plea of insanity as a defense and also show that he has been restored to sanity or recovered from his insane condition?

Mr. Proctor: No.

Mr. Hogan: If you should, after hearing the evidence in this case and the law as given to you by His Honor, entertain a reasonable doubt either as to the guilt of this defendant or as to his legal capacity to commit the

299 crime charged, would you resolve that doubt in favor of the defendant and acquit him?

Mr. Proctor: If it is a reasonable doubt according to

the evidence, I would; yes, sir.

Mr. Hogan: You would resolve that doubt in favor of this defendant and turn him loose?

Mr. Proctor: If the evidence proves so; yes, sir.

Mr. Hogan: Do you believe that because there has been an indictment in this case, that that is some evidence of guilt?

Mr. Proctor: No, sir.

Mr. Hogan: Pass him to you.

Mr. Brown: We accept the jury.

Mr. Hogan: The services of Mr. Proctor will not be required.

The Court: All right.

The Marshal: E. E. Hardin.

(The above named juror, called by the Marshal, was duly sworn by the Clerk.)

The Court: Mr. Hardin, you have heard me explain to the other members of the jury panel the general nature of this case, and you understand what the case is about?

Mr. Hardin: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

300 Mr. Hardin: No, sir.

The Court: Do you know anything about the facts of the case?

Mr. Hardin: Nothing, only what I read in the papers.

The Court: Have you formed any fixed opinion in any way as to the guilt or innocence of this defendant?

Mr. Hardin: No, sir.

The Court: Is there any reason why you cannot sit and serve as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Hardin: No, sir.

Mr. Brown: Mr. Hardin, where do you live, sir?

Mr. Hardin: Spencer County.

Mr. Brown: Do you operate and own a farm down there?

Mr. Hardin: Yes, sir.

Mr. Brown: Are you married?

Mr. Hardin: Yes, sir.

Mr. Brown: Have you a family, Mr. Hardin?

Mr. Hardin: Three children.

Mr. Brown: What are the ages of the children.

Mr. Hardin: Twenty-two, five and seven.

Mr. Brown: Mr. Hardin, if, under the law as given to you by the Court, and if the facts as testified to from the witness-stand warrant it, would you recommend a death penalty in the case?

301 Mr. Hardin: Yes, sir.

Mr. Brown: Pass him to you.

Mr. Hogan: Mr. Hardin, have you ever sat upon a jury that recommended or imposed the death penalty?

Mr. Hardin: No, sir.

Mr. Hogan: Do you know any member of the Stoll, Speed or Sackett families?

Mr. Hardin: Well, there is a Mr. Speed at Taylorsville that's related to the Speeds, I think.

Mr. Hogan: Do you know any of the Louisville Speeds?

Mr. Hardin: No, sir.

Mr. Hogan: Or Sacketts, or Stolls?

Mr. Hardin: No, sir.

Mr. Hogan: Do you have any business contacts or connections with the Taylorsville Mr. Speed?

Mr. Hardin: No, sir.

Mr. Hogan: How many acres do you have in your farm?

Mr. Hardin: 240.

Mr. Hogan: It is located within what distance of Taylorsville?

Mr. Hardin: Eight miles.

Mr. Hogan: Toward what town?

Mr. Hardin: Shelbyville.

Mr. Hogan: Have you ever had any business transactions yourself with the Stolls, or the Speeds, or the Sacketts?

302 Mr. Hardin: No, sir.

Mr. Hogan: Do you receive the crop cut-out payments?

Mr. Hardin: Yes, sir.

Mr. Hogan: Have you ever held a public office?

Mr. Hardin: No, sir.

Mr. Hogan: Or a political office?

Mr. Hardin: No, sir.

Mr. Hogan: Ever served upon any board or commission?

Mr. Hardin: No, sir.

Mr. Hogan: Have you sat upon a jury in the Spencer Circuit Court or in the Federal Court here within the past twelve months?

Mr. Hardin: No, sir, it has been about two years since I have been here—three years.

Mr. Hogan: Have you read anything in the newspapers about this case?

Mr. Hardin: Well, when it happened I did.

Mr. Hogan: Did you formulate any opinion then as to the guilt or innocence of this defendant?

Mr. Hardin: No, sir.

Mr. Hogan: Have you since formulated any opinion whatsoever about the guilt or innocence of this defendant?

Mr. Hardin: No, sir.

Mr. Hogan: Has anybody ever talked to you about this case?

303 Mr. Hardin: Well, yes, I have heard several talk about it.

Mr. Hogan: Just generally or did they seek you out to specifically discuss it with you?

Mr. Hardin: Just generally.

Mr. Hogan: From that general conversation, were you influenced or did you formulate any opinion about it?

Mr. Hardin: No, I can't say that I did.

Mr. Hogan: Did you formulate any unfavorable opinion towards this defendant?

Mr. Hardin: No, sir.

Mr. Hogan: Do you entertain any prejudice against one charged with a crime when that person pleads as a defense insanity?

Mr. Hardin: No.

Mr. Hogan: Are you willing to accept a plea of insanity if it should be proven to your satisfaction?

Mr. Hardin: Yes, sir.

Mr. Hogan: Do you have any prejudice against one who pleads insanity and is able to show a restoration to sanity?

Mr Hardin: No.

Mr. Hogan: Is any member of your family employed by the Government?

Mr. Hardin: No, sir.

304 Mr. Hogan: Any member of your family or household on any board or commission of the Government?

Mr. Hardin: No, sir.

Mr. Hogan: Do you know of any reason why you cannot sit upon this jury and, after hearing the evidence and the law as given to you, render a fair and impartial verdict?

Mr. Hardin: No.

The Court: Did you ask him if he knew of any reason?

Mr. Hogan: Yes, sir. I said, is there any reason why—

The Court: Was your answer yes or no to that?

Mr. Hardin: No.

The Court: There is no reason?

Mr. Hardin: No.

Mr. Hogan: Pass him to you.

Mr. Brown: Accept the juror.

Mr. Hogan: Accept the juror.

The Court: Let the jury stand and be sworn.

(The jury was then duly sworn by the Clerk.)

The Court: Be seated.

Mr. Brown: I suggest that before we select the alternates, we take a short recess.

The Court: Members of the jury, do not discuss this matter among yourselves or with anyone. This ap-

305 plies to the members of the panel too. Do not allow anyone to discuss it in your presence. Avoid contact with anyone that may be interested in this case. It is necessary for us to select two alternate jurors before we tsart on the case since, in the Court's opinion, this case will take sometime and we should have some reserve jurors avail-

able in the event something should happen in the way of sickness to the members of the jury panel. Accordingly, as soon as the recess is over, we will proceed with the selection of the two alternate jurors.

We will take a short recess at this time, about ten minutes.

(A short recess was then taken, after which the hearing was resumed, as follows:)

The Court: Are you ready to proceed with the selection of the alternate jurors?

Mr. Brown and Mr. Hogan: Yes, Your Honor.

The Court: All right, Mr. Marshal, give us two names, please.

The Marshal: Stewart Early.

The Court: Was Mr. Early on that list?

Mr. Brown: He was one of those restricted.

The Marshal: I didn't think so.

The Court: Yes, he is on the restricted list.

306 The Marshal: Paul Marion; John A. Baesse.

(The two last above named were duly sworn by the Clerk.)

Mr. Brown: As I understand it, Your Honor, Mr. Marion will be Alternate Juror No. 1.

The Court: Selected by lot, in the event that one becomes incapacitated.

You two gentlemen who have just taken your seats there by the jury box, you understand that we are now selecting two alternates who will sit with the regular jury and hear the evidence during the complete trial, and that you will not participate in the deliberations of the jury unless it becomes necessary for you to replace one of the members of the regular twelve. If one of those twelve becomes sick so as to be unable to continue in attendance, it may be necessary to discharge such person and replace him with one of the two alternates, but if no such casualty or eventuality happens the two alternates will merely hear the evidence through the trial and when the jury retires to consider they will be excused. You will only be used as a reserve jury in case it is necessary to use your services.

Both of you men have heard me explain this case to the

panel. You understand what the case is about.

Either one of you related by blood or marriage to the defendant, Thomas H. Robinson, Jr.?

307 Mr. Marion and Mr. Baesse: No.

The Court: Either one of you know anything about the facts of the case?

Mr. Marion and Mr. Baesse: No.

The Court: Has either one of you formed any fixed opinion in the case about the guilt or innocence of the defendant?

Mr. Baesse: No.

Mr. Marion: I have.

The Court: You say you have?

Mr. Marion: I have; yes, sir.

The Court: Is that an opinion that you feel exists in your mind today or do you have an open mind about it at the present time?

Mr. Marion: I think I have a definite opinion.

The Court: Does either side wish to excuse him for cause?

Mr. Brown: It is all right with me.

Mr. Hogan: I think if he has a fixed opinion he should not serve.

The Court: All right, excused for cause.

The Marshal: What is your name, sir?

Mr. Marion: Paul Marion.

The Marshal: C. C. Borders.

(Mr. Borders was thereupon duly sworn by the Clerk.)

308 The Court: Mr. Borders, you have heard me state this case generally to the other members of the jury panel?

Mr. Borders: Yes, sir.

The Court: You understand what the case is about?

Mr. Borders: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Borders: No, sir.

The Court: Do you know anything about the facts in the case?

Mr. Borders: No, sir, only what I have read in the papers, that's all.

The Court: Have you formed any fixed opinion about the guilt or innocence of this defendant?

Mr. Borders: No, sir.

The Court: Is there any reason why either one of you two gentlemen cannot sit as an alternate juror or regular juror as called upon in this case and render a fair and impartial verdict according to the law and evidence?

Mr. Baesse: Yes, sir.

The Court: There is a reason why you cannot sit?

Mr. Baesse: I am hard of hearing.

The Court: You are hard of hearing?

Mr. Baesse: Yes, sir.

The Court: You mean you think it would be
309 difficult for you to hear the evidence?

Mr. Baesse: Yes, sir, I think it would.

Mr. Borders: I could not conscientiously recommend a death penalty.

The Court: What has been the condition of your hearing?

Mr. Baesse: Just one ear is deaf. Shuffling and coughing makes it difficult for me to hear.

The Court: Have you been hearing what has been going on here?

Mr. Baesse: Not thoroughly.

The Court: All right, both of you gentlemen may be excused. Let me get your names.

Mr. Baesse: J. A. Baesse.

Mr. Borders: C. C. Borders.

The Marshal: Hubert Rogers. B. J. Campbell.

(Mr. Rogers and Mr. Campbell were duly sworn by the Clerk.)

The Court: Mr. Rogers and Mr. Campbell, you have heard me explain the case to the other members of the panel. You both understand the general nature of this case?

Mr. Rogers and Mr. Campbell: Yes, sir.

The Court: Either one of you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Rogers and Mr. Campbell: No, sir.

The Court: Either one of you know anything
310 about the facts of the case?

Mr. Campbell: Only what I read in the paper.

The Court: Either one of you formed any fixed opinion in the case about the guilt or innocence of the defendant?

Mr. Rogers I formed an opinion.

The Court: Are you Mr. Rogers?

Mr. Rogers: Yes, sir.

The Court: How about you, Mr. Campbell?

Mr. Campbell: No, sir.

The Court: Have you an opinion now, Mr. Rogers?

Mr. Campbell: Yes, sir.

The Court: One that has continued from the time when you first made it up to the present time and it exists in your mind now?

Mr. Rogers: Yes, sir.

The Court: One that is unfavorable to the defendant?

Mr. Rogers: Yes, sir.

The Court: All right, you may be excused, Mr. Rogers.

The Marshal: C. E. Miller.

(Mr. Miller was duly sworn by the Clerk.)

The Court: Mr. Miller, you heave heard me explain the case to the other members of the panel?

Mr. Miller: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

311 Mr. Miller: No, sir.

The Court: Do you know anything about the facts of the case?

Mr. Miller: No, sir.

The Court: Have you formed any fixed opinion in this case as to the guilt or innocence of the defendant?

Mr. Miller: No, sir, I have not.

The Court: Is there any reason why either one of you two gentlemen cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Miller and Mr. Campbell: No, sir.

The Court: Mr. Brown.

Mr. Brown: Mr. Miller, where are you from, sir?

Mr. Miller: Meade County.

Mr. Brown And your business?

Mr. Miller: Farmer.

Mr. Brown: Have you a family, Mr. Miller?

Mr. Miller: Yes, sir.

Mr. Brown: What size family?

Mr. Miller: Five children and my wife.

Mr. Brown: Mr. Miller, under the law as given to you by the Court, and if the facts as testified to from the witness-stand justify it, could you recommend a death penalty?

Mr. Miller: Yes, sir.

Mr. Brown: Mr. Campbell, where are you from sir?

312 Mr. Campbell: Louisville, Kentucky.

Mr. Brown: And your business?

Mr. Campbell: Plastering business.

Mr. Brown: Are you married, Mr. Campbell?

Mr. Campbell: Yes, sir.

Mr. Brown: What size family have you?

Mr. Campbell: Three children.

Mr. Brown: Mr. Campbell, under the law as given to you by the Court, and if the facts as testified from the witness-stand justify it, could you recommend a death penalty in this case?

Mr. Campbell: Yes, sir.

Mr. Brown: Pass them. Mr. Campbell, do you know counsel for the defendant, Mr. Robert E. Hogan?

Mr. Campbell: No, sir.

Mr. Brown: Pass them to you.

Mr. Hogan: Mr. Miller, what size farm do you have?

Mr. Miller: I have a 300 acre farm.

Mr. Hogan: What part of Meade County are you located in?

Mr. Miller: I live seven miles West of Brandenburg on U. S. 60.

Mr. Hogan: Do you receive the cut-out checks from the Government?

Mr. Miller: Yes, sir, I do.

313 Mr. Hogan: Do you know Mr. Brown or Mr. Inman?

Mr. Miller: No, I do not.

Mr. Hogan: Are you acquainted with the members of the Stoll, Speed or Sackett families?

Mr. Miller: No, I am not.

Mr. Hogan: Are you related by the ties of blood or marriage to any members of those families?

Mr. Miller: No, sir.

Mr. Hogan: Do you do any business or trading with the Stolls, Speeds or Sackett families, or with any business in which they are interested?

Mr. Miller: No, sir.

Mr. Hogan: Have you ever sat upon a jury that imposed or recommended the death penalty?

Mr. Miller: I have not.

Mr. Hogan: Would you have any prejudice against this defendant if he should during the course of this trial plead insanity as a defense?

Mr. Miller: I would not.

Mr. Hogan: If you should, after hearing the law and the evidence, entertain a reasonable doubt in your mind either as to his guilt or as to his capacity to commit the crime charged, would you resolve that doubt in his favor and acquit him?

Mr. Miller: I would; yes, sir.

314 Mr. Hogan: Mr. Campbell, have you ever sat upon a jury that imposed the death penalty?

Mr. Campbell: One time.

Mr. Hogan: Did you vote to impose the death penalty?

Mr. Campbell: It was unanimous.

Mr. Hogan: You did vote that way?

Mr. Campbell: Yes, sir.

Mr. Hogan: And the death penalty was imposed?

Mr. Campbell: Yes, sir.

Mr. Hogan: Have you sat upon a jury in the Circuit Court within the past twelve months?

Mr. Campbell: No, sir.

Mr. Hogan: Have you sat upon a jury in this Court within the past twelve months?

Mr. Campbell: No, sir.

Mr. Hogan: Would you, after hearing the evidence and the law, resolve any reasonable doubt in your mind in favor of the defendant?

Mr. Campbell: Yes, sir.

Mr. Hogan: As to his guilt or as to his capacity to commit a crime, the crime charged in the indictment, and acquit him?

Mr. Campbell: Yes, sir.

Mr. Hogan: Do you do any business with the Stoll, Speed or Sackett families?

315 Mr. Campbell: Well, through the firm. They buy gas from them, that's all.

Mr. Hogan: Do you sell them any materials?

Mr. Campbell: Well, they sell them material, wall plaster—Kentucky Wall Plaster.

Mr. Hogan: Are you an officer of the Kentucky Wall Plaster Company?

Mr. Campbell: I am one of the owners.

Mr. Hogan: And that company of which you are one of the owners deals with the Stoll Oil Company, is that right?

Mr. Campbell: Yes, sir.

Mr. Hogan: They buy from you?

Mr. Campbell: They buy materials sometimes when they build stations.

Mr. Hogan: Would that influence your decision in this case?

Mr. Campbell: No.

Mr. Hogan: Do you know any of the Stoll family?

Mr. Campbell: No, sir.

Mr. Hogan: With whom do you deal at the Stoll Oil Company usually?

Mr. Campbell: Well, they do it through the plant, Kentucky Wall Paster. I don't know who they deal with. There are others run the business up there—my uncle.

316 Mr. Hogan: Who is your uncle?

Mr. Campbell: John Campbell.

Mr. Hogan: Do you know Mr. Brown.

Mr. Campbell: No.

Mr. Hogan: Mr. Inman?

Mr. Campbell: No.

Mr. Hogan: Is any member of your family employed by the Government?

Mr. Campbell: My son.

Mr. Hogan: Where is he employed?

Mr. Campbell: The FBI, special agent.

Mr. Hogan: Would that fact influence your decision in this case?

Mr. Campbell: No.

Mr. Hogan: Has your son worked on any facts in this case?

Mr. Campbell: No, sir.

Mr. Hogan: Pass him to you.

Mr. Brown: Accept the alternate jurors.

Mr. Hogan: Mr. Campbell will not be required.

The Marshal: W. C. Magruder.

(Mr. Magruder was duly sworn by the Clerk.)

The Court: Mr. Magruder, you have heard me explain this case to the other members of the jury panel?

Mr. Magruder: Yes, sir.

317 The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Magruder: No, sir.

The Court: Do you know anything about the facts of the case?

Mr. Magruder: No, sir.

The Court: Have you any fixed opinion one way or the other as to the guilt or innocence of this defendant?

Mr. Magruder: No, sir.

The Court: Is there any reason why you cannot sit and serve as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Magruder: No, sir.

The Court: Mr. Brown.

Mr. Brown: Your Honor, I thought this was one of the jurors that said he was not a housekeeper.

Mr. Magruder: That is true, Judge.

The Court: I thought you said that you kept your home here in Louisville.

Mr. Magruder: I am going to vote here, and I am only a widower now and I am staying with my son until the war is over. Then I am coming back and go into business. But I wouldn't be a housekeeper and I am not a housekeeper now.

The Court: You may be excused. Gentlemen, that
318 exhausts our jurors with the exception of those that may be—

Mr. Brown: If he is otherwise acceptable, I will certainly waive that housekeeper qualification if Mr. Hogan is willing to.

Mr. Hogan: After I interrogate him, I may be willing to do it. You want to interrogate him first?

Mr. Brown: Yes, sir, I will go ahead and ask him first. shall I proceed, Your Honor?

The Court: Yes.

Mr. Brown: Mr. Magruder, when you owned property in Louisville, where did you live?

Mr. Magruder: At 1309 First.

Mr. Brown: 1309 S. First Street?

Mr. Magruder: Yes, sir.

Mr. Brown: And when you were in business, what type of business were you in?

Mr. Magruder: Tiles and mantels—Hegan, Magruder Company.

Mr. Brown: Mr. Magruder, under the law as given to you by the Court, and if the facts as testified to from the witness-stand justify it, could you recommend a death penalty?

Mr. Magruder: Yes, sir.

Mr. Brown: Pass him to you.

Mr. Hogan: What business is your son in, Mr. Magruder?

319 Mr. Magruder: He is a chemist, metallurgist.

Mr. Hogan: By whom is he employed?

Mr. Magruder: Carter Carburetor Company, St. Louis.

Mr. Hogan: Is that the only child or children you have?

Mr. Magruder: Yes, sir.

Mr. Hogan: How long has the Hegan, Magruder Company been out of business?

Mr. Magruder: Since 1932.

Mr. Hogan: During the course of that business did you sell to the Stoll, Sackett or Speed families any materials?

Mr. Magruder: Practically all of them, through the company—Mr. Sackett and Mr. Speed, perhaps Mr. Stoll.

Mr. Hogan: You know them well, I take it?

Mr. Magruder: No, I do not.

Mr. Hogan: The Stolls?

Mr. Magruder: I knew the old gentleman years ago.

Mr. Hogan: Senator Sackett?

Mr. Magruder: I knew Mr. Sackett.

Mr. Hogan: Did you know Mr. J. B. Speed?

Mr. Magruder: I only knew him when I would see him. I dealt through his architect and contractors.

Mr. Hogan: You said a moment ago you knew the old old gentleman years ago. To whom did you refer?

Mr. Magruder: That's Mr. Stoll. He is dead, I
320 believe.

Mr. Hogan: You knew Charles C. Stoll, the head of Stoll Oil Company?

Mr. Magruder: C. C. Stoll; yes, sir.

Mr. Hogan: That was a rather intimate relationship?

Mr. Magruder: No, sir.

Mr. Hogan: Intimate business relationship?

Mr. Magruder: No, sir.

Mr. Hogan: Extensive business relationship?

Mr. Magruder: Only selling him material for his residence through his architect and contractor.

Mr. Hogan: Well, the Stoll Oil Company had considerable business of that type, did it not?

Mr. Magruder: That was the kind that I sold him. I sold him for his individual residence.

Mr. Hogan: Is that the only business transaction you ever had with Mr. Charles Stoll?

Mr. Magruder: Yes, sir.

Mr. Hogan: Would the fact that you had had business relationships with Mr. Stoll influence your decision in this

case?

Mr. Magruder: No, sir.

Mr. Hogan: Have you read the newspapers about this case?

Mr. Magruder: Yes, sir, I have read what's in the newspapers.

321 Mr. Hogan: Did you formulate an opinion on that article or articles?

Mr. Magruder: I did not.

Mr. Hogan: Have you any fixed opinion as to the guilt or innocence of this defendnat?

Mr. Magruder: No, sir.

Mr. Hogan: Has anybody ever discussed the case with you?

Mr. Magruder: Only in a general way, years ago when it was up.

Mr. Hogan: Did any members of the Stoll, Speed or Sackett families discuss it with you?

Mr. Magruder: No, sir.

Mr. Hogan: Was that discussion just by general topic of the day?

Mr. Magruder: That's right.

Mr. Hogan: From that discussion, did you formulate then an opinion?

Mr. Magruder: No, sir.

Mr. Hogan: Or were you influenced by the opinion of others?

Mr. Magruder: No, sir.

Mr. Hogan: Have you ever sat upon a jury that imposed the death penalty?

Mr. Magruder: No, sir.

322 Mr. Hogan: Did you ever have any social, civic, religious or charitable contacts with the members of the Stoll, Speed or Sackett families?

Mr. Magruder: No, sir.

Mr. Hogan: With what religious denomination are you affiliated?

Mr. Magruder: Methodist.

Mr. Hogan: Did you ever attend the same church as any members of the Stoll, Speed or Sackett families?

Mr. Magruder: No, sir. I am not an active member by any means. That's my belief.

Mr. Hogan: Pass him back to you.

Mr. Brown: Accept the jury.

(Here followed an off-the-record conference between counsel and the court, after whiich the hearing proceeded as follows:)

The Court: Mr. Magruder, you may stand aside.

Now, members of the jury panel, that brings us down to the situation that I hoped we would not come to, namely, our reserve list of jurors. All have asked to be excused for on reason or another. You can see that we are just as in dire need of your services as your employers are, or your business is, and while I would like to let all of you off, I feel that some of you possibly can be used as jurors and under the circumstances should be used as jurors. I
323 am going over this list. I have gone over it several times. There are fourteen names on this list. I feel that I will have to excuse ten of you. The other four I am going to keep as possible jurors, subject to qualification. The following people, then, can be excused: J. W. Haycraft, W. O. Gibson, J. S. Early, Mrs. McClarty, Guy Attkisson, Earl Dacon, Bob McElroy, John W. Crain, Russell Argenbright, Fred Whitehead. The four jurors who asked to be excused and whose excuses I do not think justify them being excused at the present and who will be asked to stay: Mr. Sam Houtchen, J. M. McTighe, R. C. Money, Mr. Logan Crume. Mr. Marshal, you put those four names in the box—Mr. Sam Houtchen, J. M. McTighe, R. C. Money and Mr. Logan Crume. The other ten that I have referred to and have asked to be excused can be excused. Please go to the Clerk's office and get your certificates and then to the Marshal's office to get your compensation before you leave. That also applies to all the other members of the jury panel who have been called into the box and who have been excused for some reason or other. There are four men to remain, as I have told you. Call one of the four.

The Marshal: Sam Houtchen. Come around, Mr. Houtchen.

(Mr. Houtchen was duly sworn by the Clerk.)

The Court: Mr. Houtchen, you have heard me explain to the other members of the jury panel what this case is about?

324 Mr. Houtchen: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas H. Robinson, Jr.?

Mr. Houtchen: No, sir.

The Court: Do you know anything about the facts of the case?

Mr. Houtchen: Only what I have read.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Houtchen: I would be opposed to a death penalty.

The Court: I don't just want you to follow the lead of other jurors. I want you to exercise an honest opinion in this case.

Mr. Houtchen: That's my honest opinion.

The Court: Have you ever sat on other juries where the death penalty has been imposed?

Mr. Houtchen: No, sir.

The Court: Have you ever expressed to anybody heretofore that you were opposed to the death penalty?

Mr. Houtchen: Yes, sir, I have.

The Court: Recently?

Mr. Houtchen: No, sir.

The Court: You mean to say then, that even if the

325 Court or the law authorized it and the evidence justified it, you would still decline to do it?

Mr. Houtchen: I couldn't do it, Judge.

The Court: All right, you can be excused.

The Marshal: Arle C. Money.

(Mr. Money was duly sworn by the Clerk.)

The Court: Mr. Money, you have heard me outline this case to the other members of the jury panel.

Mr. Money: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Money: No, sir.

The Court: Do you know anything about the facts of the case?

Mr. Money: Only what I have read in the newspapers.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Money: No.

The Court: You may ask him, Mr. Brown.

Mr. Brown: Mr. Money, where do you live, sir?

Mr. Money: Spencer County.

Mr. Brown: You own and operate a farm down there?

Mr. Money: Yes, sir.

Mr. Brown: Do you have a family, Mr. Money?

326 Mr. Money: Yes, sir.

Mr. Brown: What size family?

Mr. Money: I have three children.

Mr. Brown: Mr. Money, under the law as given to you by the Court, and if the facts as testified to from the witness-stand justify it, would you recommend a death penalty?

Mr. Money: I am not altogether opposed to capital punishment, but in this particular case and what I know about it I would be.

Mr. Brown: You are not opposed to capital punishment?

Mr. Money: Not altogether; no, sir.

Mr. Brown: Not what?

Mr. Money: Not altogether; no, sir; in some cases.

Mr. Brown: That's what I am trying to get at now. If the facts as testified to from the witness-stand justify it to you, would you have any conscientious scruples about recommending it? Would you?

Mr. Money: Well, I say, in some particular cases I would not.

Mr. Brown: You don't know anything about the facts of this case, do you?

Mr. Money: No, only what I have read in the papers.

The Court: You mean, it would depend on the facts in each case then.

327 Mr. Money: That's right.

Mr. Brown: Now, if the facts as disclosed in this case in your opinion justify it, you have no conscientious scruples against recommending it, do you?

Mr. Money: No.

Mr. Brown: I pass him on to you.

Mr. Hogan: Are you related to any members of the Stoll, Speed or Sackett families?

Mr. Money: No, sir.

Mr. Hogan: Is any member of your family related to them?

Mr. Money: No, sir.

Mr. Hogan: Do you know them?

Mr. Money: I know, yes, sir, some of them. I know members of the Speed family very well.

Mr. Hogan: What members of the Speed family do you know, sir?

Mr. Money: Mr. Speed, Taylorsville, a very good friend of mine.

Mr. Hogan: Do you know the Louisville Speeds?

Mr. Money: No.

Mr. Hogan: What relation is the Taylorsville Speeds to the Louisville Speeds?

Mr. Money: Cousins, I think.

Mr. Hogan: What business is the Taylorsville Mr. Speed in?

328 Mr. Money: He is a retired farmer.

Mr. Hogan: What is that?

Mr. Money: Retired farmer.

Mr. Hogan: Have you ever sat upon a jury in which the death penalty was imposed?

Mr. Money: No, sir.

Mr. Hogan: Do you trade or do any business with the Stoll Oil Company?

Mr. Money: Only as far as buying gas.

Mr. Hogan: Do you buy that under contract?

Mr. Money: No.

Mr. Hogan: Just occasionally?

Mr. Money: Just occasionally.

Mr. Hogan: Do you know any members of the Stoll Oil Company?

Mr. Money: Yes, sir, I have an acquaintance with them.

Mr. Hogan: Who do you know?

Mr. Money: Well, through my sister—Mr. Berry Stoll, I think William Stoll, some of them.

Mr. Hogan: Through your sister you know them?

Mr. Money: Yes, sir.

Mr. Hogan: Who is your sister?

Mr. Money: Well, I have two or three of them.

Mr. Hogan: Well, this particular one through
329 whom you know Berry Stoll.

Mr. Money: Mrs. Coslow.

Mr. Hogan: Is she employed by the Stolls?

Mr. Money: No, sir.

Mr. Hogan: What is her business?

Mr. Money: She is teaching school.

Mr. Hogan: Would you mind relating how you know Mr. Berry Stoll through that sister?

Mr. Money: Well, she had a friend here in Louisville, it has been several years ago, was acquainted with them. She used to visit there, and young Mr. Stoll used to come there to the place.

Mr. Hogan: Do you see Mr. Berry Stoll often?

Mr. Money: No, sir.

Mr. Hogan: How long has it been since you saw and talked to him?

Mr. Money: Oh, it has been quite awhile.

Mr. Hogan: Years or months?

Mr. Money: Years.

Mr. Hogan: Any member of your family employed by the Government?

Mr. Money: I have two daughters working for the Government.

Mr. Hogan: In what department?

Mr. Money: Well, one of them is secretary to the
330 draft board, and the other one is with the Government map service here in Louisville.

Mr. Hogan: Do you know Mr. Brown or Mr. Inman?

Mr. Money: No, sir.

Mr. Hogan: Do you receive a crop cut-out payment?

Mr. Money: Soil conservation payment.

Mr. Hogan: Are you in any other business except farming?

Mr. Money: No, sir.

Mr. Hogan: Do you own any stock in any of the companies in which the Stoll, Speed or Sackett families have any interest?

Mr. Money: No, sir.

Mr. Hogan: Do you have any prejudice against one charged with a crime of pleading insanity as a defense?

Mr. Money: No, not particularly.

Mr. Hogan: You say not particularly. Just what kind of prejudice do you have?

Mr. Money: It just depends on the evidence.

Mr. Hogan: Have you at any time felt that because one interposed a plea of insanity that that was an unjustified or a sham offense?

Mr. Money: I have; yes, sir.

Mr. Hogan: Has that been your general conviction and belief?

331 Mr. Money: Several times.

Mr. Hogan: Is that your belief in this case?

Mr. Money: Not particularly; no, sir.

Mr. Hogan: You keep saying "not particularly", Mr. Money. Is it at all your belief or opinion?

Mr. Money: No, I wouldn't say it was; from what I have read of the case.

The Court: It depends on the facts in each particular case?

Mr. Money: Absolutely; yes, sir.

Mr. Hogan: Have you read the newspaper articles about this case?

Mr. Money: Yes, sir.

Mr. Hogan: From a reading of those articles, did you form in your mind any opinion about the guilt or innocence of this defendant?

Mr. Money: Yes, sir; I did.

Mr. Hogan: Is that a fixed opinion?

Mr. Money: No, I wouldn't say it was.

Mr. Hogan: Do you carry that opinion with you today?

Mr. Money: No.

Mr. Hogan: When did you lose it?

Mr. Money: Well, after the case was over, sometime ago.

Mr. Hogan: Was that opinion from its inception
332 an unfavorable opinion to this defendant?

Mr. Money: Yes, sir.

Mr. Hogan: And you never dismissed that opinion from your mind until, as you say, the case was over sometime ago?

Mr. Money: That's right.

Mr. Hogan: After that time you did not have an occasion to bring it to your attention again.

Mr. Money: No, sir.

Mr. Hogan: So the last time it was before you, you still had an unfavorable opinion against this defendant.

Mr. Money: Yes, sir.

Mr. Hogan: And you have not changed that opinion.

The Court: I think the question is now, the point is now, whether or not you have any opinion at the present time, whether you have an open mind in this case.

Mr. Hogan: No, Judge.

The Court: You can ask him something else. I am asking him this.

Mr. Money: Well, I think I have.

The Court: You haven't any opinion one way or the other at the present time.

Mr. Money: No.

Mr. Hogan: Mr. Money, would it take evidence to change whatever opinion you might have had in the past?

333 Mr. Money: Yes, sir.

Mr. Hogan: In other words, you come to this jury service with an unfavorable slant towards this defendant.

Mr. Money: Well, I would have to admit that, I guess.

The Court: Now, Mr. Money, you answer me one way and you answer Mr. Hogan the other way. They can't both be right. I am asking you whether you have an open mind at this time and do not have your former opinion. You tell me yes. Then you tell Mr. Hogan that you do have an opinion that would have to be overcome by the evidence.

Now, which one of those is true?

Mr. Money: What I meant, Your Honor, it would take evidence to make me change the opinion I did have.

The Court: Then you still have an opinion at the present time. You do not have an open mind.

Mr. Money: I guess that's right.

The Court: All right, stand aside.

The Marshal: James N. McTighe.

(Mr. McTighe was duly sworn by the Clerk.)

The Court: Mr. McTighe, you heard me state this case to the other members of the jury panel?

Mr. McTighe: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

334 Mr. McTighe: No, sir.

The Court: You know anything about the facts in this case other than what you have read from the newspapers?

Mr. McTighe: Just what I have read and discussed with different people.

The Court: With different friends who may have read it also?

Mr. McTighe: My father is connected with the Byrne & Speed Coal Company.

The Court: That connection or discussion given you any fixed opinion in this case as to the guilt or innocence of the defendant?

Mr. McTighe: I think it has.

The Court: Favorable or unfavorable to the defendant?

Mr. McTighe: Unfavorable.

The Court: Do you have that opinion now?

Mr. McTighe: Yes, sir.

The Court: Irrespective of your desire not to serve on the jury, you still have an opinion, do you?

Mr. McTighe: That's right; yes, sir.

The Court: All right, Mr. McTighe, you may be excused.

The Marshal: Logan Crume.

(Mr. Crume was duly sworn by the Clerk.)

335 The Court: Mr. Crume, you have heard me state

what this case is about?

Mr. Crume: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas H. Robinson, Jr.?

Mr. Crume: No, sir.

The Court: Do you know anything about the facts in the case?

Mr. Crume: Only what I have read in the paper.

The Court: Does that cause you to have any fixed opinion as to the guilt or innocence of this defendant?

Mr. Crume: No, sir.

The Court: Is there any reason why you cannot sit as a juror and render a fair and impartial verdict according to the law and evidence as it will be presented to you?

Mr. Crume: No, sir.

The Court: Mr. Brown.

Mr. Brown: Where are you from, sir?

Mr. Crume: Springfield.

Mr. Brown: Washington County?

Mr. Crume: Yes, sir.

Mr. Brown: Are you married, Mr. Crume?

Mr. Crume: Yes, sir.

Mr. Brown: Do you have a family?

Mr. Crume: Yes, sir; two children.

336 Mr. Brown: Mr. Crume, under the law as given to you by the Court, and if the facts as testified to from the witness-stand warrant it, could you recommend a death penalty?

Mr. Crume: No, I don't believe I could.

Mr. Brown: You mean in no case, regardless of the facts, you could not recommend a death penalty?

Mr. Crume: No, I could not.

The Court: Mr. Crume, is that a belief that you have recently acquired?

Mr. Crume: No, sir, Judge.

The Court: Or is that a belief you have had for sometime?

Mr. Crume: It is a belief I have had for some little time.

The Court: Have you ever expressed that belief to

anybody?

Mr. Crume: Just talking about it.

The Court: With whom have you talked?

Mr. Crume: People on the street.

The Court: Where?

Mr. Crume: In Springfield.

The Court: Give us the names.

Mr. Crume: Ed Litsey.

The Court: Where does he live?

Mr. Crume: Springfield.

337 The Court: All right, what is the next one?

Mr. Crume: Grider.

The Court: Does he live in Springfield?

Mr. Crume: Yes, sir.

The Court: What is his first name?

Mr. Crume: Otho.

The Court: All right, anybody else?

Mr. Crume: No, sir.

The Court: Is it your statement now when you are answering the questions put to you as a prospective juror, that you have previously told those two men that you are conscientiously opposed to a death penalty?

Mr. Crume: Well, in some cases.

The Court: Now we are changing, in some cases.

Mr. Crume: In some cases; yes, sir.

The Court: You are not, then, in some cases opposed to a death penalty. You didn't tell those men.

Mr. Crume: No, sir.

The Court: Mr. Brown, go ahead.

Mr. Brown: That's all. I pass him to you.

Mr. Hogan: What part of Washington County do you live in, Mr. Crume?

Mr. Crume: I live two miles North of Springfield.

Mr. Hogan: That's near Willisburg?

Mr. Crume: Ten miles this side.

338 Mr. Hogan: Do you live just nearer Springfield than any other town then.

Mr. Crume: Yes, sir.

Mr. Hogan: Do you know any member of the Stoll, Speed or Sackett families?

Mr. Crume: No, sir.

Mr. Hogan: Do you do any business with those companies in which they have an interest?

Mr. Crume: Only just stop somtime and buy gas.

Mr. Hogan: Do you have any members of your family employed by the United States Government?

Mr. Crume: No, sir.

Mr. Hogan: Have they ever been so employed?

Mr. Crume: No, sir.

Mr. Hogan: Were you ever so employed?

Mr. Crume: No, sir.

Mr. Hogan: Are you on any board or commission?

Mr. Crume: No, sir.

Mr. Hogan: Do you receive a conservation check?

Mr. Crume: Yes, sir.

Mr. Hogan: Commonly called a cut-out check?

Mr. Crume: Yes, sir.

Mr. Hogan: Have you ever sat upon a jury that imposed the death penalty?

Mr. Crume: No, sir.

339 Mr. Hogan: Do you have any prejudice against one who interposes and pleads insanity as a defense to the crime charged?

Mr. Crume: Some; yes, sir.

Mr. Hogan: Do you believe that one who pleads insanity does so for the purpose of excusing himself from the accusation of the commission of the crime?

Mr. Crume: Yes, sir.

Mr. Hogan: Then you do have a prejudice, then.

The Court: Just a minute. I believe anyone who pleads insanity does it for the purpose of getting out of the crime, that is the nature of the plea, but does the fact that such a defense is made cause you to react unfavorably to it in any way?

Mr. Crume: No, sir.

The Court: Can you still hear the issue on that point, hear the evidence and decide it without prejudice one way or the other?

Mr. Crume: Well, to some extent.

The Court: Well, would you be influenced either for

or against such plea outside of any evidence you hear or would you decide the issue entirely upon the evidence?

Mr. Crume: Well, I believe I would kinda look against it.

The Court: In other words, you do not want to serve on this jury.

340 Mr. Crume: No, sir.

The Court: You may be excused. Where do you live, Mr. Crume?

Mr. Crume: Springfield.

The Court: All right. Take a note of Mr. Crume, Mr. Clerk.

Gentlemen, that exhausts our jurors. We will probably have to delay a day or two before we can get some more. It is rather unusual for a panel of some over a hundred or more not to be able to get people who would be willing to serve as jurors. We did not anticipate that we would run into such a situation, and accordingly did not have any more available, but we can get some more. It just means an inconvenience to the present jury which will have to remain together while we are getting more jurors and delaying the witnesses who are here to testify until we can get the jurors present.

I would like to confer with counsel.

Mr. Brown: I would like to suggest, Your Honor, that we take a chance on one alternate.

The Court: I will confer with you and counsel. It is lunch time anyhow, and we can excuse everyone until about 2:00 o'clock. The jury can be excused likewise. I think the persons who are in charge of the jury should be sworn, the bailiff and the two deputy marshals—come for-

341 ward and be sworn.

(The bailiff, Mr. Moorman, and two deputy marshals, Mrs. Bernardine Kearney and Mr. Cassidy, were then duly sworn by the Clerk.)

The Court: All right, the Jury will go to lunch in charge of the deputy marshals and be here for court at 2:00 o'clock. The other members, that is, the jurors who have been in the box and excused, are, of course, excused, they need not return. You probably want the witnesses to

be here, don't you?

Mr. Brown: Yes, sir.

The Court: The witnesses will return at 2:00 o'clock.

(At this point the further proceedings were adjourned for lunch and recess.)

342 After the recess the following proceedings were had:

The Court: I will announce to the jurors and parties in interest that after conferring with the attorneys in the case and giving consideration to the different elements involved, particularly to the loss of time and to the delay which would be encountered in attempting to get additional jurymen here, it has been decided to proceed with just one alternate juror instead of the two as we had originally contemplated.

Accordingly, the jury will be considered as having been selected together with the one alternate which we will have available and, after the swearing of the alternate, the trial will proceed as in the usual course.

(At this point the alternate was sworn by the Clerk.)

Mr. Hogan: If Your Honor please, I would like for the record to show my exception to the ruling of the separate alternate.

The Court: I understood that there would be no exception to it.

Mr. Hogan: We discussed it but I did not know that was decided on.

The Court: You remember, we talked about it in chambers.

343 Mr. Hogan: Then I withdraw it.

The Court: I said if there was any objection to it, it would not be done.

Mr. Hogan: All right.

The Court: Mr. Brown, do you want the witnesses sworn?

Mr. Brown: Yes, sir.

The Court: Does the defense want any witnesses sworn at the same time?

Mr. Hogan: No, we will reserve the swearing of the witnesses at the present time.

(The witnesses for the government were sworn by the Clerk.)

The Court: Is a separation desired?

Mr. Hogan: Yes, a separation is desired.

The Court: Let all the witnesses who are to testify in this case, either for the government or for the defendant, please retire to the courtroom down the hall here where you can remain subject to call, keeping in mind that no smoking is permitted in that courtroom. Also, if you do wish to smoke, you may retire to the hall adjoining the courtroom and use the bench available there, but do not go away where you cannot be located very promptly because we do not want to have to wait for looking for witnesses who may have strayed around the corner
344 or somewhere else where they cannot be located.

Robinson, there seems to be some question of whether or not you are represented in this case by Mr. Monte Ross. He has not appeared as counsel in this case as yet. He told me definitely last night or yesterday afternoon that he is not in the case. He is not here now.

Mr. Robinson: Mr. Ross is only appearing in an advisory capacity.

The Court: I don't care whether he is representing you in an advisory capacity—is he representing you in any capacity? He is not here.

Mr. Robinson: It is perfectly agreeable to me to proceed without him.

The Court: All right. Then it is understood that he is not an attorney in the case, and you do not request that he be an attorney in the case?

Mr. Robinson: That is right.

The Court: Are counsel ready to proceed then?

Mr. Brown: Yes, Your Honor. Mr. Inman will make the opening statement on behalf of the government.

The Court: Now, Members of the Jury, in a criminal case in a United States District Court, counsel for both the government and for the defendant have the right to make opening statements to the jury outlining to the jury what their evidence is expected to show.

345 I want you to keep in mind that the opening

statements are not evidence and it is not to be considered by you as evidence in the case, but it will merely be considered as a preview of what counsel expects his evidence to show when it is introduced.

You will be guided, of course, by the evidence as it is actually introduced later.

The government will present its opening statement first, through Mr. Inman, the Assistant District Attorney, and counsel for the defendant has the option to make his statement either at the close of Mr. Inman's statement or reserve it until the close of the government's proof. They have the same opportunity depending upon the time that they may elect to do so.

Mr. Inman: May It Please The Court and Members Of The Jury:

A great many witnesses will be necessary to prove the allegations laid in the indictment the Court has read to you, and for that reason I want to discuss with you as briefly as I can the evidence that will be introduced in this case.

First, I want to point out now that this case is styled "United States of America vs Thomas Henry Robinson Jr." It is a criminal indictment. The Court has
346 read that indictment to you. It is in no sense, and the proof will show you that it is not in any sense, a lawsuit between the Stoll, Speed and Sackett families and Thomas Henry Robinson Jr.

The proof to be introduced by the United States will show you that this defendant, Thomas Henry Robinson Jr. was born May 7, 1907 in Nashville, Tennessee; that he is now 36 years of age. The proof will show you that in Nashville, Tennessee, he attended the grade schools of that city; that he attended the Wallace Preparatory School; and that he continued his education even to Vanderbilt University where, as a student in the law school of the Vanderbilt University, he studied for a period of time, just a few months short of graduation.

The proof will show you that he is an unusually well-educated defendant in a criminal court.

The proof will further show you, Members of the Jury,

that this defendant came to Louisville in 1931 and for a period of time, of approximately 5 weeks, starting June 1, 1931, until July 10, 1931, he was employed at the Stoll Oil Company; employed as a station attendant at the Second and Broadway Station. In July of 1931, the proof will show you, this defendant left the employ of the Stoll Oil Company voluntarily and on his own statement that
347 he left to secure better employment.

The proof will show you further that after that, the defendant left Louisville, and in 1934, the proof will show you, he was residing in Chicago, Illinois. From May 7 to August 18, the proof will show you, he was employed as a janitor at the Forsythe Building of Chicago. In that employment he used his own name, Thomas Henry Robinson Jr., but the proof will show you that on July 17, 1934, this defendant rented an apartment at 4639 Magnolia Avenue, in Chicago, and there he used, not his own name, but the name of John Ward. As "John Ward and wife" he rented that apartment and lived there under that name. Part of the time he was living there he was working at the Forsythe Building under his own name.

Then on September 20, 1934, just a short time prior to the commission of the crime laid in this indictment, the proof will show you, this defendant, still using the name of John Ward, went to the Saunders-U-Drive-It system in Chicago where he rented an automobile, a Ford Tudor automobile, under the name of John Ward.

The proof will show you that that car figures very heavily in the commission of this crime.

Further, the proof will show you that while he was living in Chicago, and about the first part of September of the year 1934, he left Chicago, saying that he was
348 going to Evansville, Indiana, to get a wrecked car, but the proof will show you that as early as September 7th he was here in Louisville and registered at the Tyler Hotel. He returned to Chicago after that trip and rented the automobile from the Saunders-U-Drive-It company, and the proof will show you that he took this automobile that he had rented from the Saunders-U-Drive It Company, together with his wife, and they drove from

Chicago to Indianapolis, Indiana.

The proof will show you that there in Indianapolis, Indiana, he adopted another name, Thomas W. Kennedy, and as Thomas W. Kennedy this defendant rented an apartment, Apartment No. 2, at 2735 North Meridian; as Mr. and Mrs. Thomas W. Kennedy this defendant and his wife occupied that apartment for a short while, starting September 22d to October 8, 1934.

The proof will show you, as I have pointed out, that he was in Louisville on September 7, 1934, registered at the Tyler Hotel as John Ward; that he then returned to Chicago and then to Indianapolis as Thomas W. Kennedy; and then, the proof will show you, on October 8, 1934, he returned to Louisville and again assumed the name of John Ward, and went back to the Tyler Hotel where he registered on October 8th.

The proof will show you that between October 8th and October 10th this defendant busied himself around the City of Louisville.

349 The proof will show you that on one occasion, just before the kidnapping charged in this indictment, this defendant assumed the role of a telephone repairman and entered the home of Mr. C. C. Stoll, the father of Berry V. Stoll, and he entered that home at 2535 Cherokee Parkway in this City posing as a telephone repairman.

The proof will show that there were a number of persons in that home. The proof will show you further that it was the intention of this defendant when he came to Louisville on that occasion to kidnap C. C. Stoll. When he entered that home he surveyed that home, and then left. And the proof will show you that he entered the home of George Stoll, again representing himself as a telephone repairman. He found there the maid and, after pretending to examine the telephone in the George Stoll home, he left that home.

The proof will show you that about 2 p.m. on October 10th, the day of the kidnapping charged in this indictment, this defendant appeared on Bardstown Road at the garage operated by Mr. Hugo Kottke. The proof will show you that he went into the garage of Mr. Kottke and asked Mr.

Kottke the direction to Lime Kiln Lane. Mr. Kottke was confused in his own mind as to the exact location and asked this defendant whom he wanted to see, and this defendant replied that he was going to the home of
350 Berry V. Stoll and wanted directions to get to Lime Kiln Lane. The proof will show you that Mr. Kottke called a friend of his at Harrod's Creek and secured the exact directions for proceeding from Bardstown Road to Lime Kiln Lane and that he advised this defendant as to the closest and quickest and best route to Lime Kiln Lane.

Approximately one hour later, at about 3 p.m. on the 10th day of October, 1934, the proof will show you that this defendant knocked on the door of the Berry V. Stoll residence. The proof will show you that that residence is situated on Lime Kiln Lane, a farm of about 53 acres, the residence situated about 600 feet from the highway, and over 500 feet from the nearest house.

About 3 o'clock in the afternoon of October, 10, 1934, this defendant, again posing as a telephone repairman, knocked on the door of the Berry V. Stoll residence. The maid answered the door, the proof will show you, and this defendant inquired of the maid is this East 2941? That at that time was the telephone number of the Berry V. Stoll residence. The maid replied, "Yes, that is our telephone number."

The proof will show you that this defendant, in the guise of that telephone repairman, entered the home of Berry V. Stoll and Alice Speed Stoll on that occasion; that he immediately went to a telephone situated in the
351 hall near the door; that he examined that telephone, inquired of other telephones about the premises, engaged the maid in conversation, and especially concerning others who were on the farm at the time. "Do you have a chauffeur?" he asked. "Do you have any hired hands?", he asked. "Who is working here?" And the maid, not suspecting him to be the kidnapper that he was, replied "We have one man who will be here until 4 o'clock. He will be here until 4 o'clock. We have no chauffeur." Then Robinson asked her, "What about your husband?", and she replied "This is his day off."

And in this way, the proof will show you, the defendant satisfied himself that there was no one at those premises after 4 o'clock on October 10, 1934, except the maid and himself and Mrs. Stoll.

The proof will show you that he went to the garage to make an examination for himself to determine whether or not anyone was there and whether or not there was any telephone extension in the garage.

The proof will show you that in that conversation between this defendant and the maid, Ann Woolet, this defendant inquired, "Whose daughter is Mrs. Stoll? Who is her father?" and the maid replied, "She is the daughter of Mr. William S. Speed."

The proof will further show you that all of the wires in the telephone box on the main floor of the Stoll
352 residence were disconnected by this defendant—every one of them taken from the post in the box.

The proof will show you that he went to the basement and there cut the leading wire leading into that telephone box. Further, the proof will show you that he said to the maid, "I desire to examine the extension, there must be an extension upstairs." The maid advised him that there was and he said he had to examine it.

The proof will show you that the maid went upstairs and found Mrs. Stoll, who had been suffering from a cold and who was resting in her bedroom, completely dressed with the exception of a street dress and in the place of that she had on a kimono. The maid informed Mrs. Stoll of the desire of this telephone man to examine that extension and the proof will show that Mrs. Stoll moved from her bedroom into the guest room in order that that examination might be made.

That proof will show that this defendant Robinson went to the upstairs of the Stoll residence, having satisfied himself that there were only two persons on the place, both of whom were women, and having gotten both of them to the second floor of that residence, he asked the maid to accompany him into the Master Bedroom where he could examine the extension and she could assist him.

353 The proof will show that as the maid stood in that

bedroom waiting to assist this man whom she thought was a telephone repairman, he suddenly pulled upon her a gun and ordered her to lead the way into the guest room where Mrs. Stoll was resting.

The proof will show that at the point of a gun this defendant forced the maid into that guest room.

"What are you doing here", Mrs. Stoll inquired of him, and he answered, "I am here to kidnap you." He stood there with the gun in his hand; both of the women, the only persons on the Stoll residence, stood before him.

The proof will show you that Mrs. Stoll plead with him, offered him money, offered him a check if he would go and leave her alone. He refused.

The proof will show that as he attempted to carry out his kidnapping scheme, as he started to bind Mrs. Stoll, he laid his gun upon the bed; and the proof will show that Mrs. Stoll immediately tried to get that gun; and that the defendant produced from his pocket an iron pipe wrapped in paper and with that pipe he struck her across the forehead, dazing her; and that he immediately picked up the gun.

The proof will show that Mrs. Stoll then said to her maid, Ann Woolet, "Ann, get the other gun, the one we have."

The proof will show that Mrs. Stoll herself, attempted to get it and that this defendant Robinson thereupon
354 struck her across the head just above the right ear with that iron pipe, breaking her head open and knocking her back on the bed in a dazed condition.

The proof will show that that wound bled profusely there upon Mrs. Stoll's bed.

The proof will show that this defendant Robinson then forced the maid at the point of a gun to continue the binding and taping of Mrs. Stoll. "Bind her wrists", he ordered. And at his direction, as he stood there with his gun, the maid, Ann Woolet, was forced to bind Mrs. Stoll's wrists. All of the time the blood caused by the blow on the head from this iron pipe was flowing from Mrs. Stoll's head on to her neck and kimono; and the proof will show that that did not deter this defendant in his attempt to

bind her wrists.

After he had Mrs. Stoll bound, the proof will show, he then bound the wrists of Ann Woolet, the maid; he then bound the ankles of Ann Woolet and pushed her onto the floor where he left her.

The proof will further show you that this defendant at that time inquired as to the time Berry V. Stoll, the husband of Mrs. Alice Stoll, would return; that he said on that occasion, "If he returns I will kill him."

Having bound the maid and having bound Mrs. Stoll, the proof will show you that this defendant produced
355 from his pocket a ransom note which he threw there on the bed in the guest room. The proof will show that he then forced Mrs. Stoll to walk in front of him down the steps, out the door of her home and into the Tudor Ford automobile that he had rented from the Saunders-U-Drive-It Company.

The proof will show that he did permit her to get a coat which was thrown around her; that he forced her into that automobile, and forced her to lie on the floor just in front of the back seat; that he covered her with blankets and newspapers and drove away from the Stoll residence with his victom, Alice Stoll.

The proof will show that that ransom note, typed in red and black, bearing spots of the victim's blood, was found there in that guest room.

The proof will show that this defendant had intended originally to kidnap C. C. Stoll; that the envelope in which that note was contained was addressed to members of the Stoll family and in pencil is added "and Mr. Speed"; that there is scrawled across that envelope in pencil "$50,000 for Mrs. Stoll".

The proof will show you further that that ransom note was typed on a Corona portable typewriter purchased by this defendant at the Meffert Equipment Company in Louisville, Kentucky, on July 8, 1931. The proof will show you that that typewriter was later recovered in his apartment.

356 Further, the proof will show you that after this defendant forced Mrs. Stoll from her home, her

wrists bound, her mouth taped with adhesive tape, and forced her into the automobile where he then tied her ankles and covered her with newspapers and blankets, that he drove from Louisville, Kentucky, to Indianapolis, Indiana.

The proof will show you that at least on one occasion during that ride he stopped and spoke to someone. The proof can't show you who it was, but the proof will show you that on the evening of October 10, 1934, this defendant drove into a garage at the rear of an apartment house at 2735 North Meridian, the apartment house where this defendant had lived at Apartment No. 2 as Thomas W. Kennedy.

The proof will show you that when he arrived in that garage Mrs. Stoll was still covered with the blankets and newspapers and still on the floor of that automobile. The proof will show you that he locked the car and said to her, "I am going to see if the coast is clear. If you make a move I will bump you off." The proof will show that he returned in a few minutes to the automobile, saying that the coast was not clear and that they could not enter at that time.

The proof will show that they drove around Indianapolis for a short while, during which time this defendant unbound the feet of Mrs. Stoll, allowed her to sit on
357 the side of the automobile and later returned to that same garage where he forced her to enter the apartment at 2735 North Meridian, Apartment No. 2.

In the meantime, the proof will show you, here at Louisville Mrs. Stoll's husband, Berry V. Stoll, had returned home. There he found the envelope and in it he had found the ransom note, typed in black and red. And the proof will show that the ransom note, mostly typed on a typewriter, bears the printing in ink and pencil, intended for C. C. Stoll at first and then his address in type to members of the Stoll family, to which has been added in pencil "And Mr. Speed".

The proof will show you that the ransom note mentions "Stoll," referring to C. C. Stoll; that the ransom note threatens to kill the person kidnapped, scatter his ashes in a stream of water, clean the galvanized tank in such a

manner as to defy microscopic examination. "There will be no ashes to analyze. This will keep the law from finding the corpus delecti or body of Stoll."

Further the proof will show you that this ransom note makes a demand for the payment of $50,000; that the amount or ransom first placed in this note on the typewriter was $30,000; that there is printed in ink on the top of the second page of that note these words: "The same for Mrs. Stoll, except the amount, $50,000."

358 And further the proof will show that that ransom note directed that $25,000 be paid in $10.00 bills and $25,000 be paid in $20.00 bills. The proof will further show that in that note the kidnapper, Thomas Henry Robinson Jr. named as intermediary T. H. Robinson, 1716 Ashwood Avenue, Nashville, Tennessee; that he directed that this ransom money be placed in a package and that that package be shipped to Nashville, Tennessee, by railroad agency; that it be addressed to T. H. Robinson at the address I have pointed out; that it have a value of $10.00 placed upon that package; and that for failure to comply with the terms of that ransom note, the life of his victim, Mrs. Alice Speed Stoll, would be taken.

The proof will show you that when her husband, Berry V. Stoll, came to that residence about five o'clock on the afternoon of October 10th, he found the maid, her wrists still bound; he found in the guest room the blood of his wife on the bed; that he found there the tape and wire; that he found there the iron pipe with which his wife had been struck.

The proof will show you that from that afternoon of October 10th and through the next few days there was a feverish attempt to comply with the instructions of this kidnapper. Fifty Thousand Dollars was secured; Fifty Thousand Dollars was counted, the serial num-

359 bers were recorded by employes of the Fidelity & Columbia Trust Company on the night of October 11, 1934. Fifty Thousand Dollars was placed in a package just as this kidnapper had directed and that package, in accordance with his direction, was taken to the railway express office here in Louisville and addressed by express

to T. H. Robinson of Nashville, Tennessee; the $10.00 valuation was placed thereon and the package turned over to the employees of the railway express agency. That package was delivered in Nashville, Tennessee, to T. H. Robinson, the father of this kidnapper.

During that time, the proof will show, at Indianapolis, Indiana, where the defendant held Mrs. Stoll a prisoner, he was becoming increasingly angry, threatening again the life of Mrs. Stoll.

The proof will show that that apartment at Indianapolis consists of 3 rooms, a living room, a bed room and a kitchen. The proof will show that off of the living room and in between the living room and the kitchen there was a closet and the proof will show that when this defendant left that apartment, in his attempt to contact his intermediary and in his attempt to speed up the payment of the ransom money, he would on each occasion and did on each occasion tape the mouth of Mrs. Stoll, tie her hand and foot, and place her in that closet which he locked and left her in that condition until he returned.

360 And the proof will show that at night he tied her wrists, each of them, to the bed springs of her bed, and another cord to his wrist in another bed so that any move she might make would be known to him, and he tied her at night and on each occasion when he left.

The proof will show you that the first word received by the family of Alice Stoll from the kidnapper came on October 14, 1934, on Sunday at two o'clock in the afternoon when a telephone call came to a friend of Mrs. Stoll, a lifelong friend, then Miss Elizabeth McHenry and now Mrs. Douglas Potter. The proof will show that this telephone call came to the home of Miss McHenry, the long distance operator saying that Henry Saunders wanted to speak to her; and the proof will show that Henry Saunders was a name well known to Miss McHenry and she accepted the call collect.

The proof will show then that that conversation continued and that this defendant said, "I am Mr. Cook of Scottsburg, Indiana. I have here a pair of alligator shoes with gold buckles, size 6AA, purchased at Sacks. I have

here a sapphire ring mounted in diamonds. Does that mean anything to you?'' ''Yes,'' Miss McHenry replied, ''they belong to Mrs. Stoll.''

The proof will show you that this defendant, posing then as Mr. Cook of Scottsburg, Indiana, said, ''Then I have a message for you. The police are watching
361 Mr. T. H. Robinson; change the intermediary from T. H. Robinson to his daughter-in-law, Frances Robinson, the wife of this kidnapper. Instruct them not to follow Frances. Use your influence with the family to call off the police.'' The kidnapper, then posing as Mr. Cook, hung up.

The proof will show that that conversation was confirmed by letter dated October 14, 1934, from the victim herself, Mrs. Stoll, to her friend Miss McHenry. The proof will show that the letter started with the salutation ''Dear Scout'', a nickname known only to those two, a nickname that came down from their early childhood, and that the call made by this kidnapper was verified by that letter, ''Dear Scout''. ''The phone call to you was okay. I asked the kidnapper to go somewhere and call you. He said he drove to Indianapolis to do so. The kidnapper knows that the police are watching the intermediary, and the kidnapper now wants the intermediary to deliver the money to Mrs. Frances Robinson, his daughter-in-law. She will or already has received instructions. This is the only person from whom and the only way the kidnapper will agree to accept the money. This is final. Do not attempt to try to call the person who called you or trace the call in any way. The person who called you was a friend of the kidnapper and will receive the money. Therefore instruct all my family to be sure that this daughter-is-law is not followed or
362 interfered with in any way. If these instructions are followed I will be released unharmed within 24 hours. Otherwise I am sure they will carry out their threat. Get my family to use all their influence to withdraw the law from this case until I return. This is imperative.''

The proof will show that that letter was written by Alice Stoll while she was held a prisoner by this defendant Robinson; that he dictated it and forced her to sign it;

that that letter was mailed on Sunday October 14th, addressed to Miss McHenry, sent Special Delivery, and it arrived here in Louisville on Sunday night at about 11:30 p. m.

The proof will show that on the day previous to that, in that hideout at Indianapolis, while this kidnapper held Mrs. Stoll a prisoner, he forced her to write another letter, a letter dated Saturday October 13th and addressed

"Dear Intermediary:

"This is Alice Stoll writing. We are sending my wedding ring on which is engraved my name if you look inside closely. I am well and being treated nicely. I only have a slight cut on my head. If you haven't already done so, please pay over the money to the one this man tells you to. (Signed) Alice Stoll. P. S. The man I am referring to is the man who is sending this letter to you with instructions. Of course you may have already paid it,
363 in which event please ignore this letter."

The proof will show that attached to that letter was the wedding ring of Alice Stoll. The proof will show that she was forced by this kidnapper to write a letter to the victim's own father which this kidnapper mailed in Indianapolis; and that on the same Sunday, October 14th the Sunday of the telephone call to Miss McHenry, and the Sunday of the letter to Miss McHenry, the proof will show you that another letter was written at the direction of this kidnapper, a letter to the victim's husband, Berry V. Stoll:

"I only had a small cut on my head and it has healed and I am otherwise all right and being treated nicely. The kidnapper found out last night that the intermediary, Mr. T. H. Robinson, and his daughter-in-law were being watched and that he couldn't give the money to his daughter-in-law because of the police. Both the kidnapper and I believe that you meant to deliver the money in good faith but that you are being double-crossed by the police. My life depends on this daughter-in-law not being shadowed so she can deliver the money. The kidnapper will not accept any other person other than this daughter-in-law to

deliver the money. Therefore you must for my sake see that this girl is not interfered with or followed to her destination.

"I sent a letter with my wedding ring to Mr. T. H. Robinson.

"Because the law is double crossing us the kid-
364 nappers refuse to release me until twenty-four hours after they receive the money from this girl.

"I know this is my last chance to be returned alive. If the money is delivered all right I will be released unharmed.

"Much love,
Alice."

365 From Wednesday until Sunday, Wednesday the 10th until Sunday the 14th, those letters were written. This kidnapper had been becoming increasingly apprehensive, increasingly angry that the money had not reached him, changing intermediaries, ordering the family to withdraw the police, to get away from the officers of the law.

The proof will show you that that letter addressed "Dear Mr. Intermediary" was enclosed in a letter from this defendant to his father, T. H. Robinson, Sr., by air mail, special delivery, and delivered at Nashville, Tennessee, that he typed that letter to his father "Dear Mr. Intermediary" and signed it "The Kidnapper", that in that he gave instructions about the payment of the $50,000.00 to Frances Robinson, and about its delivery by her. And the proof will show you that on each of those letters, upon the ransom note, the letter from Mrs. Stoll, the letter from this kidnapper, all bear the fingerprints of Thomas Henry Robinson, Jr. who sits before you in this court. They were written, the proof will show you, those of them which were typed, were written on that Corona portable typewriter purchased by him at Meffert Equipment Company on July 8th, 1931. And the proof will further show you that on Tuesday, October 16th, 1934, at about 9:00 o'clock in the morning, there came to that apartment too, at 2735 North Meridian, Frances Robinson, the wife of this defendant; that she brought with her
366 $50,000.00 of ransom money, and there in that apart-

ment delivered to this kidnapper $50,000.00; that he inquired of her if she had any good money, and she turned over to him a quantity of money in addition to the ransom money; that he reached into that package and pulled out a small package of money which he delivered to his wife, Frances Robinson. The proof will show you that that package contained $470.00 of that ransom money.

The proof will show you then that this defendant threatened to again tape and tie Mrs. Stoll, leave her there in that apartment by herself; that she pled with him not to tie her, not to tape her, not to place her in that locked closet and leave her there after he had received the $50,000 that he had demanded. And the proof will show you that he had at that time prepared a letter addressed to the custodian of that apartment house, saying to that custodian:

"You are a working man. You deserve some consideration. There may be some reward for the one who finds Mrs. Alice Speed Stoll who was kidnapped. I know you need the money. I do not want to see a policeman get the reward as he is an agent of the rich capitalists and levies his salaries and bribes on the capitalists. Therefore, I want you to discover Mrs. Stoll and get any reward offered. Go to my apartment and you will find her in the closet next
367 to the bath room door. Offer her my apologies for having to treat her thus, but it was the only way whereby I had time to hide out successfully. I trusted her as she was a good sport and not like the type of rich pampered girl I expected. She could even cook. (Signed) Mr. Kennedy, Apartment 2, 2735 North Meridian."

His plans laid, the proof will show you, to abandon Mrs. Stoll there in that apartment, an apartment in which the shades had been drawn for over a week, an apartment in which he had held her prisoner, an apartment, in which there was no reason for anyone to enter. He was about to leave her there, leaving this note for the custodian to find her at some later date.

The proof will show you that she pled with him, that Mrs. Frances Robinson refused to accompany him, and that he left them both there in that apartment with instructions to remain there in that apartment. The proof will show you that this defendant then left that apartment; in his possession was $50,000.00 less $470.00.

The proof will show you that Mrs. Stoll, still worried, still in fear of her life, still weak, remained there, and that within thirty minutes, the proof will show you, this kidnapper popped back into that apartment to determine whether or not Mrs. Stoll had left or any alarm
368 had been spread, and again threatened her life should she leave that apartment.

The proof will show you that she remained there until about 2:00 P. M. on that October 16th, 1934; that about 2:00 o'clock in the afternoon she did leave that apartment, weak, suffering from the wound on her head, nervous, upset and excited. She was able to walk one block to the drug store where she and Mrs. Robinson found the address of a Reverend Clegg, a relative of the Stoll family, unknown to Mrs. Stoll until she read in an Indianapolis newspaper that the Cleggs were relatives of the Stoll family, and in the taxicab, the proof will show you, she went to Reverend Clegg's home.

The proof will show you that she had been instructed, threatened, her very life threatened if she attempted to get in touch with her family, and so she called her friend, Miss McHenry, the one who had received the telephone calls from the kidnapper, and told her she was coming home, and on the afternoon of October 16th, 1934, the Reverend Clegg and his wife started from Indianapolis, Indiana to Louisville with Mrs. Robinson and Mrs. Stoll. They were overtaken, the proof will show, by agents of the Federal Bureau of Investigation, at Scottsburg, Indiana, and Mrs. Stoll was returned to her home that night by agents of that Bureau.

The proof will show you that at that time, a week from the time she was taken forcibly from her home, she
369 returned, her head matted with blood, her lips raw from the adhesive tape that had been placed over

them and jerked off by this kidnapper, her wrists with marks from the wire, generally upset, nerves completely shattered. The proof will show you that she was immediately placed in bed and a doctor called to attend her.

In the meantime, in Indianapolis, the proof will show, agents of the Federal Bureau of Investigation, had descended upon the hide-out in the apartment at 2735 North Meridian, and there were found the typewriter, the wire, the adhesive tape, the kimono. The proof will show you that during the time Mrs. Stoll was held prisoner there she had removed the kimono and had put on a dress belonging to Mrs. Robinson which was in the apartment. Those things were found, together with this letter addressed to the custodian saying that Mrs. Stoll would be found in a closet. Those things, members of the jury, will be introduced in evidence so far as they are now available, nine years after the offense. The proof will show you that some of them are available. Some of them, unfortunately, are not. They will all be described to you by the testimony of witnesses who saw them, witnesses who saw the bedspread, witnesses who saw a little silk bag there at the Stoll residence used by this kidnapper to wipe the blood from his hands before he forced Mrs. Stoll from her home, witnesses who saw that guest room with the
370 wire, the tape and the blood, witnesses who saw the typewriter, the tape, the wire and the kimono in Indianapolis. They will all be introduced for your consideration.

The proof will show you that this defendant, Thomas Henry Robinson, having then carried out his kidnapping of Mrs. Stoll, having then secured $50,000.00 of ransom money, fled from Indianapolis in that same Ford automobile he had rented in Chicago from the Saunders-U-Drive-It, and on October 16th, 1934, he drove from Indianapolis to Springfield, Ohio, where he registered as Jerry Dobson and where he abandoned that car in a garage at Springfield, Ohio.

The proof will show you that he went from Springfield to Cleveland, to New York, where we find him registered at the Hotel New Yorker as T. M. Wakefield, a representa-

tive of Johns-Manville Company, Waukegan, Illinois. And the proof will show you that on December 24th, 1934, he was registered at the Waldorf-Astoria Hotel in New York as T. M. Warner of Lake Forrest, Illinois; that on January 8th, 1935, he was registered at the Ritz Carlton Hotel in New York as Morton Wallis of Oak Park, Illinois.

The proof will show you that in his efforts to elude capture by agents of the Federal Bureau of Investigation, by police of Louisville, of Kentucky, and of the entire United States, he moved repeatedly from place to place, changing his name, seeking to change his identity.

In January, 1935, the proof will show you he made
371 a trip from New York to Los Angeles, California, and at the Ambassador Hotel, the proof will show you, on January 17th, 1935 he was registered as Neill Martin. At the Los Angeles Biltmore Hotel, on January 18th, the proof will show you he was registered as Leslie K. Burgess. The proof will show you that in 1935, under the name of Leslie K. Burgess, he purchased a three thousand dollar Packard sedan automobile; that he went back to New York in that Packard, and that he lived in New York in many and varied places, under different names, which will be disclosed to you by the evidence, and there in Forrest Hills Fireproof Storage Company he rented a two drawer filing cabinet for the safe-keeping of his property.

And the proof will show you that on December 5th, 1935, he was back in the West at Silver City, New Mexico, again assuming the name of L. K. Burgess and attempting to purchase a ranch.

The proof will show you that during the rest of December, January, February, March and April of 1936, he lived at various places, under various names, finally moving to 510 Cavanaugh Street, Glendale, California.

The proof will show you that on May 11th, 1936, agents of the Federal Bureau of Investigation surrounded the house at 510 Cavanaugh Street, Glendale, California; that
372 when a special agent knocked on the front door of that house, this kidnapper Robinson, alone in the house, answered the door; that he was then taken into custody by agents of the FBI who searched that premises

and found on the person of this defendant a loaded 45 caliber Colts automatic which he was unable to use. In the house they found two 25 caliber Colts automatics, a shot gun, a 38 revolver, and quantities of ammunition for all of those firearms.

And further, the proof will show you that agents found there in that house, in the house and on the person of this defendant, $4687.64 in cash; $2330.00 of that money being original ransom money paid over for the release of Mrs. Stoll.

That, members of the jury, is in brief the testimony that will be introduced by the United States. Many witnesses will be required. Some of them will be required to testify to many facts. Some of them will be required to testify to one or two of the facts that make up the picture of this crime. And for that reason, I wanted to discuss that with you, that you may see how each part of this testimony fits into the completed picture of the crime of kidnapping charged in this indictment, for that is the proof the United States will rely upon to sustain that charge.

The Court: Will the defense make its opening statement at this time or reserve it until later?

373 Mr. Hogan: The defense elects to reserve its opening statement.

The Court: Before we proceed, then, with the evidence on behalf of the Government, we will take a short recess, so the jury can move around and rest themselves.

Do not discuss this matter among yourselves or with anyone, or permit anyone to talk about it in your presence. The Marshal will show you upstairs to one of the jury rooms where you will find yourselves some ease and comfort and rest.

We will convene again in approximately ten minutes. The Marshal will give us a recess.

(At this point a short recess was taken, after which the hearing was resumed, as follows:)

The Court: Are you ready with the first witness for the Government?

Mr. Brown: Call Mr. Henry Wehmhoff.

Testimony of Henry Wehmhoff

HENRY WEHMHOFF, called as a witness on behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the Jury.

A. Henry Wehmhoff.

Q. Where are you employed, Mr. Wehmhoff?

374 A. I am an investigator in the Alcohol Tax Unit, Louisville.

Q. That's the federal service?

A. Yes, sir.

Q. From what school or college are you a graduate?

A. Cornell University.

Q. When did you graduate there?

A. 1928.

Q. What degree did you receive?

A. C.E.—Civil Engineer.

Q. Following that time, did you work as a civil engineer?

A. Not as a civil engineer; no, sir.

Q. What employment did you have immediately after that?

A. Immediately after school, or shortly thereafter, I was an engineer for the Electrical Research Products Company, Incorporated, a subsidiary of Western Electric Company.

Q. When did you come into the government service?

A. In December, 1934.

Q. Have you had experience in surveying and platting real estate?

A. Yes, sir.

Q. On November 15th and 16th, 1943, did you go to the Stoll residence on Lime Kiln Lane?

A. Yes, sir.

375 Q. In Jefferson County, Kentucky?

A. Yes, sir.

Q. Did you survey that residence and the property surrounding it?

A. With the assistance of Investigators Lallinger and

Campbell, the survey was made.

Q. As a result of that survey, did you make a plat, a drawing of that property?

A. Yes, sir.

Q. Is this the plat?

A. That is.

Mr. Hogan: Your Honor please, I submit that this witness has not been properly qualified as a maker of maps. He says he is a graduate of Cornell as a civil engineer, and the only other qualifying question was, "Are you experienced?" That's a conclusion of the witness.

The Court: Do you wish to qualify him any more, Mr. Inman.

Q. I will ask you whether you have had much or little experience in making surveys and plats, Mr. Wehmhoff?

A. Yes, sir. I have had, since 1934, or, rather, since 1935, the first time I made a survey with the Government, I have made several in various parts of Kentucky and Tennessee.

Q. And as far as making a plat following a sur-
376 vey, have you had much or little experience in that?

A. Well, the plat was made after each survey was made.

Q. Are you able to properly reproduce on the plat the information secured from your survey?

A. Yes, sir.

The Court: Is that kind of work included in the course leading to a civil engineer degree?

The Witness: Yes, sir.

The Court: Any further objection?

Mr. Hogan: I would like to take him on his qualifications, Your Honor.

The Court: All right. Suspend for a moment, Mr. Inman.

Mr. Hogan: You have since 1934 been employed by the Alcohol Tax Unit, have you not, Mr. Wehmhoff?

The Witness: Yes, sir.

Mr. Hogan: Your business for that department has been the investigation of violations of the alcohol tax unit

laws, has it not?

The Witness: Yes, sir.

Mr. Hogan: Locating and finding the operation of stills?

The Witness: And other violations of the liquor laws.

377 Mr. Hogan: Violations of the—

The Witness (Interrupting): Internal Revenue laws pertaining to liquor.

Mr. Hogan: You have not during that period of time and during your employment with the Alcohol Tax Unit been required to make any maps, have you?

The Witness: Yes, sir, on several occasions I have been required to make similar maps.

Mr. Hogan: Have you ever made any maps and used them in court as part of your testimony?

The Witness: Yes, sir; that was the purpose of making the maps.

Mr. Hogan: Is that map that you have displayed there drawn to scale?

The Witness: Yes, sir; the scale of one inch equals sixty feet.

Mr. Hogan: You may have him back, Mr. Inman.

Mr. Inman: Is the objection withdrawn?

Mr. Hogan: I think he is qualified.

(Direct-examination resumed by Mr. Inman.)

Q. Mr. Wehmhoff, will you take this pointer and point out to the jury the Lime Kiln Lane?

A. Lime Kiln Road is indicated—the River Road is about a mile or so North of this map—starting at this point the Lime Kiln Road runs as indicated by the pointer

378 South, then in a Westwardly direction to this point, then in a Southerly direction where it runs into the Brownsboro Road some several miles to the South. (Indicating on map.)

Q. Now where is the entrance to the Berry V. Stoll home located?

A. The entrance is located at this point where the private road leaves the Lime Kiln Road running in an Eastwardly direction to the home. (Indicating on map.)

Q. How far is it from the gate to the residence?

A. By air line it would be 738 feet from the gate to the residence, that is, the shortest distance between the two points.

Q. Is it a little further by the road?

A. Yes, sir.

Q. Show the boundaries of the Berry V. Stoll farm.

A. Well, the boundaries as shown here, the fences are shown, I don't know whether they are the bounds of the entire property, but they start at this point.

Q. That is under fence?

A. Under fence, at the junction where this private road running back to Mr. Humphrey and Mr. Hieatt's home, then running in an Eastwardly direction beyond this point some, I should say, a thousand feet possibly beyond this point, but excluding that, the fence then runs from this point Northwardly to an old gravel road which
379 run out into a pasture and the fence is then continued, we did not make those measurements, but followed this road as indicated here. (Indicating on map.) However, the other boundary line runs along in a Northerly direction to this point above the Old House, and then in a Westwardly direction back again to Lime Kiln Road, and thence to the starting point. As I say, I don't know whether this includes all of the property owned by the Stoll estate.

Q. How far is it from the house, the residence, to the nearest point of Lime Kiln Road?

A. Well, the straight—looking from the house directly toward the road as indicated here, it measures 601 feet.

Q. Now, there are certain blocks indicated in black and red, Mr. Wehmhoff. Tell the jury what those are.

A. Well, the blocks marked with the red as indicated are the Stoll home, Old House, Sallee, Wilcox, Becker, Prentiss and Hieatt, and also a tenant house, indicate residences which were located at this scene in 1934. The block without the red marking would indicate houses built since 1934.

Q. That would include the Humphrey home, would it not?

A. Yes, sir, and the Clark home, being the nearest

homes to the Stoll house.

380 Q. Now, of those marked in red, Mr. Wehmhoff, what is the nearest residence or what was the nearest residence to the Berry V. Stoll residence in 1934?

A. The C. C. Hieatt home, which was 502 feet Southeast of the Stoll home.

Q. I will ask you to introduce that plat with your testimony as Government Exhibit No. 1.

A. I will, sir.

(The above described plat was handed to the reporter, marked Government Exhibit "No. 1" and filed with the record.)

Mr. Inman: That's all.

Mr. Hogan: No questions.

GEORGE L. STRAIN, next called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. George L. Strain.

Q. Are you a special agent of the Federal Bureau of Investigation?

A. I am.

Q. To what field office are you now attached?

A. The Louisville field office.

381 Q. In November of 1943, did you go to the Berry V. Stoll residence on Lime Kiln Lane?

A. I did.

Q. At that time did you take photographs of that residence?

A. I did.

Q. I will show you these photographs and ask you if these are the photographs you took.

A. They are, with the exception of this one.

Q. Now, I show you this photograph and ask you to

tell the jury what that is.

A. This is a photograph of the entrance to the Berry V. Stoll farm.

Mr. Hogan: I suggest, Your Honor, that those be designated by some mark or letter so they will be identified.

The Court: All right. Your Map is Exhibit No. 1, isn't it?

Mr. Inman: Yes.

Q. I will ask you to introduce that photograph with your testimony as Exhibit No. 2.

Mr. Brown: Why don't you mark them all at one time?

Mr. Inman: All right.

(The photographs referred to were handed to the reporter and marked for identification Government Ex-
382 hibits 2, 3, 4, 5, 6, 7, 8, 9 and 10, respectively.)

Q. The picture you have just marked Government Exhibit No. 2, does that fairly and accurately represent the entrance gate from the Lime Kiln Lane?

A. It does.

Q. Now, examine these that have been marked Nos. 3, 4, 5, 6, 7, 8, and 9, and tell the jury what those photographs represent.

A. This photo that is marked Government Exhibit No. 3 fairly and accurately represents a photograph of the Stoll home on approaching it after leaving the gate some little distance.

The Court: I might say to the jury, that after these have been identified and explained by the witness, the jury will have an opportunity to pass them around and see them. This is just to let you understand at the present what each picture represents.

A. (Continuing) Photograph marked Government Exhibit No. 4 fairly and accurately represents a photograph of the Stoll home taken from the front of the home.

Photograph marked No. 5 represents a view of the Stoll home taken from the left of the home as you are facing the home.

Photograph No. 6 also represents a view of the home

taken from the left at a closer distance.

383 Photograph marked No. 7 is a view of the home taken from the side nearest Lime Kiln Road.

Photograph No. 8 represents a view of the home as taken from Lime Kiln Road at a point where the road turns.

Photograph No. 9 is a view of the home taken from the front at a greater distance than I believe Photograph No. 4 is taken from.

Q. Now, I will show you photograph marked Exhibit No. 10, and ask you to tell the jury what that is.

A. This is a photograph of the Stoll home as taken from the air.

Q. Does that fairly and accurately represent the Stoll home and the farm?

A. It does.

Q. I will ask you to file these photographs with your testimony as Government Exhibits Nos. 3, 4, 5, 6, 7, 8, 9 and 10, as they are marked.

(The photographs heretofore marked for identification were handed to the reporter and are filed with the record as Government's Exhibits Nos. 3, 4, 5, 6, 7, 8, 9 and 10.)

(The photographs were then passed to the jury for examination.)

Cross-examination by Mr. Hogan.

Q. What did you say your business is, Mr. Strain?

384 A. I am a special agent of the Federal Bureau of Investigation.

Q. Did you, yourself, take this No. 10 photograph from the air?

A. No, I did not.

Q. Who did take it?

A. That I don't know.

Mr. Hogan: I move to exclude No. 10.

The Court: Were you ever in an airplane over the place?

The Witness: No, I have never been.

The Court: You are not able to say then, that it is an accurate representation from the air, are you?

The Witness: From the air, no, I have never been in the air over the place.

The Court: Motion sustained. The jury will not consider picture No. 10 which was exhibited to you. It is withdrawn from your consideration.

Mr. Inman: Are you through, Mr. Hogan?

Mr. Hogan: Yes, that's all. Wait just a minute, Mr. Strain, I will recall you.

Q. Did you take these other photographs?

A. Yes, I did.

Mr. Hogan: That is all.

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385 J. DAWSON VAN EPS, next called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. J. Dawson Van Eps.

Q. Are you a special agent of the Federal Bureau of Investigation?

A. Yes, sir.

Q. To what field office are you now assigned?

A. I am assigned to the Indianapolis field office.

Q. Indianapolis, Indiana?

A. Yes, sir.

Q. I show you these photographs and ask you if you took them.

A. I took all of those, sir.

Q. Where did you take these pictures, Mr. Van Eps?

A. Those are pictures of the apartment building at 2735 North Meridian Street, Indianapolis, Indiana. They are both interior and exterior shots.

(The photographs referred to were handed to the reporter and were marked for identification Government Exhibits Nos. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and

23, respectively.)

Q. I'll show you one marked Government Ex-
386 hibit No. 18.

A. That's a photograph of the rear of the same apartment house.

Q. I'll show you the one marked Government Exhibit No. 23.

A. That's a photograph of the alley at the rear of the apartment house.

Q. I will show you the one marked Government Exhibit No. 11.

A. That's a photograph of the garage, the garage being the one in the middle of the picture, behind 2709 North Meridian Street.

Q. I will ask you whether or not the garage is the one with the doors open.

A. It is.

Q. I will show you the picture marked Government Exhibit No. 22.

A. That's a photograph taken between two apartment buildings, one being 2735 and the other 2725 North Meridian Street.

Q. Mr. Wynn, the man whose picture is in this photograph is looking at one of the buildings. Which building is he looking at?

A. He is looking at 2735 Meridian Street.

Q. At what apartment in that building?
387 A. Apartment No. 2.

Q. I'll show you the picture marked Government Exhibit No. 20, and ask you to tell the jury what that is.

A. This is a picture of the back porch of Apartment No. 2, showing the door and the bath room window.

Q. I'll show you Government Exhibit No. 19 and ask you to tell the jury what that is.

A. That's a photograph of the rear of the apartment house at 2735 North Meridian Street.

Q. Now, on which floor is apartment No. 2, with reference to the floors shown in that picture?

A. This is the ground floor. Actually, this is the basement in the apartment.

Q. The basement, then, is flush with the ground?

A. That's right, sir; at the rear of the building, that is there.

Q. What is known as the first floor is one floor up, is that right?

A. That is true; yes, sir.

Q. I will show you Government Exhibit No. 21.

A. That again is a picture taken between 2735 and 2725 North Meridian Street.

Q. The same as shown, the one with Mr. Wynn in it, Government Exhibit No. 22?

A. That's the same photograph except for Mr. Wynn.

388 Q. I'll show you Government Exhibit No. 13.

A. That's a close-up shot of the rear entrance. That's the entrance to the kitchen of Apartment No. 2 at 2735 North Meridian Street.

Q. What is the window shown?

A. That's the bath room window.

Q. Of Apartment No. 2?

A. Yes, sir.

Q. I'll show you Government Exhibit No. 17 and ask you to tell the jury what that is.

A. That's an interior photograph of the living room of Apartment No. 2 at 2735 North Meridian Street.

Q. I'll show you Government Exhibit No. 15 and ask you to tell the jury what that is.

A. That's a photograph of the closet which is located in the Southwest corner of the living room in Apartment No. 2.

Q. Is that near the bath room door?

A. Yes, sir; just to the left of the bath room door as you enter the bath room.

Q. I'll show you Government Exhibit No. 16 and ask you to tell the jury what that is.

A. That's a photograph of the same closet except that there is a chair in the closet at the time that photograph was taken.

389 Q. There is also a chair in the other, isn't there?

A. Yes, sir.

Q. What is the difference, then?

A. The chair has been changed in position.

Q. In No. 15 which way is the chair seated, frontways or sideways.

A. Sideways.

Q. And in No. 16?

A. Frontways.

Q. They are pictures of the same closet, is that right?

A. That's true.

Q. I will show you Government Exhibit No. 14.

A. That's another photograph of the same closet.

Q. With what addition?

A. Mr. Earl Wynn is sitting in the closet.

Q. That's the gentleman sitting here at counsel table?

A. Yes, sir.

Q. I will ask you to file those photographs with your testimony as they are marked, as Government's Exhibits.

The Court: Numbers what through what?

Mr. Inman: Numbers 11 through 23.

(The photographs heretofore marked for identification were handed to the reporter and are filed with the record as Government Exhibits Nos. 11, 12, 13, 14 15, 16, 17, 18, 19, 20, 21, 22 and 23, respectively.)

390 Mr. Hogan: May I ask a question before the jury takes a look at those?

The Court: Suspend looking at the pictures for a moment, please. Just put the pictures on the rail.

Mr. Hogan: Mr. Van Eps, when were these photos taken?

The Witness: They were taken on November 5th, 7th, and 8th, on three different days.

The Court: What year?

The Witness: 1943.

Mr. Hogan: Were you present when they were taken?

The Witness: Yes, sir; I took the photographs.

Mr. Hogan: You, yourself, took them?

The Witness: Yes, sir.

Mr. Hogan: Were you with the FBI in 1934?

The Witness: No, I was not, sir.

Mr. Hogan: You are not able to say that those photographs represent the true situation that existed inside and outside of that apartment in 1934, are you?

The Witness: I cannot do that.

Mr. Inman: We will show that, Your Honor.

Mr. Hogan: Subject to their connecting it up, Your Honor, we will reserve our objection.

The Court: They will have to be connected up, of course.

Mr. Inman: Yes.

391 Mr. Brown: We can only put one witness on at a time.

Mr. Inman: I take it that the jury may, then, examine the photographs?

The Court: Yes.

(The photographs referred to were passed to the jury for examination.)

Q. Mr. Van Eps, I will show you this drawing entitled "Floor Plan of Apartment No. 2, 2735 N. Meridian Street, Indianapolis," and I will ask you if you have examined that drawing.

A. Yes, sir; I have.

Q. Have you been in Apartment No. 2 at 2735 N. Meridian, Indianapolis, Indiana.

A. Yes, sir; I have.

Q. And have you measured that apartment?

A. Yes, sir.

Q. Have you compared your measurements to the measurements shown on this drawing?

A. I was with Mr. Thornton, the architect, when he made those measurements.

Q. And do the measurements that you made and the measurements on here coincide?

A. Yes, sir; they do.

The Court: Is the drawing a fair and accurate representation of the floor plan of that apartment?

A. It is drawn to scale, sir; it is.

392 Q. I will ask you, Mr. Van Eps, to take this pointer and step down here and point out to the jury the floor plan of that apartment?

Testimony of J. Dawson Van Eps

A. First of all this is a court here and the entrance to Apartment No. 2 is here. The entrance is marked "Entrance."

The Court: What floor?

Witness: Second floor.

Q. It is above what you pointed out as the basement floor?

A. Yes, sir. You go up 8 steps and then turn to the left and go through a small vestibule and you enter the living room.

Q. What is the size of the living room?

A. 18 feet 6 inches by 11 feet 8½ inches. The ceiling is 8 feet 11 inches high.

Q. All right. Now what door leads from the living room?

A. There is a door opening out from a closet in this corner of the room (indicating).

Q. Now that closet has an outside entrance doesn't it?

A. Yes, sir, it does.

Q. Yes. Now where is the bath room?

393 A. Right here (indicating). It is 7 feet 6¾ inches by 5 feet 10⅛ inches.

Q. Is there a door leading from the living room to the bath room?

A. Yes.

Q. Is there a closet next to the bath room?

A. Yes, sir, this closet which is 30½ inches by 32 inches.

Q. That is next to the bath room?

A. Yes.

Q. Now this government exhibit which is a picture of the closet with a chair in it and show the jury where that closet is located in that apartment?

A. The closet that you see the photograph of there is this closet (indicating on the map). That picture was taken from about this position.

Q. Does that closet have an outside window?

A. No, sir.

Q. What surrounds it on the four sides?

A. There is another closet to the left of the closet in

question. Of course on the opposite wall, this represents a wall, is the kitchen, and there is a bath room cabinet here, and this is a cabinet.

Q. And a living room in front?

A. That is right.

Q. Then it is pretty much in the center of that
394 apartment, isn't it?

A. Very definitely.

Q. Now you show a bed closet there. What do you mean by that?

A. At the present time that contains a roll-away bed.

Q. A Murphy bed?

A. Yes, sir.

Q. Now where is that bedroom?

A. This was intended, when the architect drew the plans for the apartment, to be used as a dining room but it is now used as a bed room, and this is a bed room.

Q. Is there a door leading from the bed room into the living room?

A. Yes.

Q. That is indicated right here?

A. Yes, sir.

Q. And is there an outside door to the bed room?

A. There is another door leading into the kitchen.

Q. None leading outside of the apartment?

A. No, sir.

Q. Where is the kitchen?

A. Just right to the right of the bed room here.

Q. And the drawings here are the cabinets and the sink?

395 A. This is the sink, and these are built-in kitchen cabinets.

Q. Where is the rear door?

A. This is the rear door at the right side of the kitchen.

Q. That is the door shown in Government Exhibit No. 20?

A. That is the door as shown in that exhibit.

Q. And when you go out of the rear door, are you on a porch?

A. Yes, sir.

Q. And the steps lead down from that porch?

A. Yes, this is the porch and the steps going up and the steps going down.

Q. Is that indicated in this exhibit?

A. That is upsidedown, sir.

Q. Now how many outside doors are there to that apartment?

A. Including the entry door, there were two—the kitchen door and this door.

Q. Well this door goes into a hall, the one marked "vestibule"?

A. That is right.

Q. Into an inside hall?

A. That is right.

396 Q. What is the size of the bath room window shown in Government Exhibit No. 13?

A. The size of the glass in that window—well it is known as a two-light, 16 by 16 window, which means that the size of the glass used in the window is 16 inches square.

Q. I will ask you to file that drawing with your testimony as Government Exhibit No. 24?

A. All right.

(The above drawing marked Government Exhibit No. 24 was handed to the Reporter and filed with the record.)

Q. Now examine that map again, Mr. Van Eps, and tell the jury how many windows are in the living room and how many windows in the bed room?

A. Three windows in the living room, and three windows in the bed room.

Q. And how many in the kitchen?

A. One window in the kitchen.

Q. Now with reference to the other apartments in that Apartment Building at 2735 North Meridian, do they adjoin this apartment?

A. Yes, sir.

Q. Is this an end apartment?

A. No, it is between two other apartments.

Q. Then beyond this solid wall here—

397 A. (Interrupting) There is another apartment.

Q. And beyond this entrance is there another apartment?

A. Yes, sir, there is.

Q. And above that is there one?

A. Yes; there is another floor—I presume there is another apartment.

Q. You have never been up there?

A. No, I have never been up there.

Q. And the basement floor is underneath that?

A. That is right.

Mr. Inman: That is all.

Cross-examination by Mr. Hogan.

Q. Suppose you step down here with your pointer, Mr. Van Eps.

A. Yes, sir.

Q. Now these straight lines indicated on this drawing at an oblique angle with these marks, are they supposed to be doors?

A. They represent doors.

Q. And the traveling of the door as it opens?

A. That's right.

Q. I see a space here just West of the bath room,

398 is there not another bath room, or the bath room to the front apartment that is located in that space right there?

A. I have never been in any other side apartment—only Apartment No. 2.

Q. So you are unable to say about that?

A. That is true.

Q. What is the width of this cabinet shown to be in the bath room?

A. This scale is three-quarters of an inch equivalent to one foot. That is approximately—if I had a rule I could tell you.

Mr. Hogan: Has anybody got a rule?

Mr. Brown: I have one.

The Court: Mr. Marshal see if you can get a rule.

Mr. Brown: We have one.

A. That is a little over one foot in width.

Q. That cabinet is located to your left as you enter into the bath room, isn't it?

A. Yes it is.

Q. And it extends out from the wall, as you say, something over one foot?

A. That is correct.

Q. And what is the length of this cabinet from this point to that point? I suppose you will need the rule again.

399 A. I measured that shelf and it is 12¼ inches in width.

Q. And what is the length of it?

A. I can only say that this closet is 32 inches deep and the cabinet is very close to that denomination.

Q. So the cabinet, according to your best judgment, is as long as that closet is deep, or 32 inches, approximately?

A. That is right.

Q. Do you know what the cabinet is used for?

A. Well to keep brushes and—

Q. (Interrupting) It is a linen closet, isn't it? For towels?

A. I believe so.

Q. Now is this representative of the location of the bath tub in the bath room?

A. That is right.

Q. And this is the location of the medicine cabinet?

A. No.

Q. And does that represent the medicine cabinet?

A. No; that represents the lavatory bowl.

Q. But above that lavatory bowl or wash basin do you know whether there is located a medicine cabinet?

A. I do not.

400 Q. Now what does this figure represent here?

A. That is a toilet stool.

Q. A regular toilet stool similar to those found in most bath rooms, I take it?

A. That is correct.

Q. Then the bath room window you speak of is just opposite the location of the toilet stool?

A. That is right.

Q. Does that bath room window open? That is, can you open the window?

A. Yes, sir; I opened it.

Q. You know that yourself because you opened it?

A. Yes, sir.

Q. In other words, does the bottom glass move upward, and does the top glass move downward?

A. I do not know about the top glass; I just moved the bottom glass up.

Q. You are certain then that the bottom glass is capable of being moved up?

A. 'Yes', sir.

Q. Now when that bottom glass is moved upward, what is immediately opposite there?

A. The rear porch.

Q. These are the risers or stairs going to the upper apartments by the rear?

401 A. That is correct.

Q. These are risers or stairs going down to the ground itself which is between the apartment at No. 2735 North Meridian and the adjoining apartment, No. 2725 North Meridian Street?

A. Yes.

Q. Do you know or did you measure the width between the two apartments?

A. Yes, sir.

Q. Tell the jury that width?

A. 8 feet and 1 inch.

Q. Or 97 inches?

A. Yes.

Mr. Brown: We will stipulate that it is.

Q. Now with reference to the side of the apartment located at No. 2725, does that apartment building have windows opposite to the windows of the bed room of this apartment No. 2 that you speak of and refer to?

A. My recollection is that there is a window directly opposite this window which is to the extreme right and

another one opposite the extreme left.

Q. Now, are the windows opposite the bed room windows of Apartment No. 2 on a level with those windows or higher or lower?

A. I do not know the answer to that.

402 Q. Do you know the distance from these windows of bedroom No. 2 to the ground?

A. Yes I do.

Q. Please tell the jury that distance?

A. You are referring to the bed-room windows?

Q. Yes?

A. The distance from the sill to the ground is 5 feet 6 inches.

Q. Now when you refer to sills, do you refer to the brick sills or to the wood sills?

A. I refer to the distance from the top of the brick sill to the ground.

Q. And that distance is what?

A. 5 feet 6 inches.

Q. 66 inches?

A. Yes, sir.

Q. What is the distance from the brick sill of the windows of the living room to Apartment No. 2 to the ground outside?

A. I don't have that measurement.

Q. What kind of a door is to be found at the entrance to living room at Apartment No. 2? That is, wood or glass?

A. There is no door where you pointed at—this is the door.

403 Q. Well, I might have missed it a few inches.

A. That is a wood door.

Q. The entrance door to the living room is what I refer to?

A. That is a wood door.

Q. Is that a thick door, or a panel door, or just what type door is that?

A. That is a panel door.

Q. Now, directly opposite the entrance door to Apartment No. 2 is entrance door to the front apartment, isn't

there?

A. Yes, sir.

Q. Does that door that opens into Apartment No. 1—is it the same type of door that opens into the living room of Apartment No. 2?

A. I did not examine it closely but I believe it is.

Q. How many windows are shown and how many exist on the front of the living room looking out into the court of this apartment building?

A. Three.

Q. What is the distance or height of those living room windows from the floor?

A. They are about the ordinary height.

404 Q. Did you make any measurements of that?

A. I made no measurements, but they are rather standard.

Q. Well, with reference to the height of these windows in this court room, would you say—

A. (Interrupting) Slightly lower than that.

Q. In your judgment about how much lower?

A. About a foot lower.

Q. The windows in this court room are approximately the height from the floor as represented on the length of this pointing stick—would you measure that and let us have it accurately?

A. Yes, sir—approximately 26 inches.

Q. While you have never measured the height of those bed room windows in Apartment No. 2—

A. (Interrupting) I have measured the bed room windows.

Q. I mean the height of the living room windows—your best recollection is that they are about 26 inches from the floor?

A. That's right, but that is purely guesswork.

Q. You could be wrong?

A. Definitely. All I can say is that they are standard height. I mean, they appear like the windows in most homes in regard to the distance from the floor.

405 Q. Now, you say when you were there this month when this drawing was prepared there was a Murphy

bed in this middle closet off of the living room?

A. That is right.

Q. And of course you do not presume to say what was there in October 1934?

A. No; I do not.

Mr. Hogan: That is all.

The Court: Members of the Jury, we will not have any night session tonight, but do not discuss this matter among yourselves or with anyone or permit anyone to talk about it in your presence; avoid contact with anyone that might be interested in this case.

We will reconvene at 9:30 tomorrow morning.

406 Convened pursuant to adjournment at 9:30 a. m. Wednesday, December 1, 1943, and proceeded with the trial as follows:

The Court: Are you ready to proceed, gentlemen?

Mr. Brown: Yes, Your Honor.

CLAIR M. HILL, was called by the government as a witness and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name?

A. Clair Mendon Hill.

Q. Where do you live?

A. 4319 North St. Louis, Chicago, Illinois.

Q. In July of 1934 where did you live?

A. 4639 North Magnolia, Chicago.

Q. By whom were you employed in July 1934?

A. Mr. George R. Archambeault.

Q. And in what capacity were you employed?

A. Assistant Manager in the apartment building.

Q. Was that apartment building located at 4639 North Magnolia?

A. Yes, sir.

Q. During July 1934 who was in charge of that apartment?

407 A. I was.

Q. Was Mr. Archambeault, the owner, in the City of Chicago?

A. No, sir.

Q. About the middle of July 1934 did you rent Apartment No. 205?

A. Yes, sir.

Q. To whom did you rent that apartment?

A. A gentleman and his wife, Mr. John Ward.

Q. John Ward?

A. That is the name he gave me.

Q. Had you seen Mr. John Ward before that time?

A. No, sir.

Q. How did you find out that was the name?

A. That was the name he gave me when I asked him his name to sign on the rent receipt.

Q. Have you seen that Mr. John Ward since that time?

A. Only in the newspapers.

Q. Do you see him in the court room now?

A. Yes, sir.

Q. Who is the man who told you he was John Ward?

A. The gentleman sitting in the center there.

Q. The one in the middle?

A. Yes, sir.

408 Q. Robinson?

A. Yes, sir.

Q. Was anyone with him when he rented that apartment?

A. His wife.

Q. I will show you this photograph—

A. Yes.

Q. And ask you if you recognize the person whose picture that is?

A. His wife.

Q. That is the person you knew as Mrs. John Ward?

A. Yes, sir.

Mr. Hogan: I suggest that is leading.

The Court: Well it is leading but it doesn't seem to be any serious matter. Frame your question in a different way, Mr. Inman.

Testimony of Clair M. Hill

Q. By what name did you know the person whose picture that is?

A. Mrs. Frances Robinson.

Q. I will ask you to file this photograph with your testimony as government Exhibit No. 25?

A. Yes, sir.

(The above photograph was handed to the Reporter, marked Government Exhibit No. 25, and filed.)

409 Q. How long did Robinson and his wife live in that apartment as Mr. and Mrs. John Ward?

A. About 2½ months.

Q. Under what conditions or what time of day or night did they leave that apartment?

A. The only time I found out was when the landlord told me in the morning that they had gone.

Q. It was between sun-down and sun-up?

A. That is right.

Q. During the time that Robinson lived there as John Ward, did you discuss with him, or did he discuss with you, where his father lived?

A. He said his father lived in Evansville.

Q. Indiana?

A. Yes, sir.

Q. Tell the jury whether or not at any time he left Chicago, or told you that he was leaving Chicago?

A. He told me at one time that he had a wrecked car and that he was going down to see about it.

Q. And where did he say the wrecked car was?

A. In Evansville.

Q. How long was Robinson gone on that occasion?

A. Three or four days.

Q. Did he then return to that apartment?

A. Yes, sir.

Mr. Inman: That is all.

410 Cross-examination by Mr. Hogan.

Q. Mr. Hill, did you know what Mr. Robinson's business was during the time he stayed at that apartment?

A. No, sir.

Q. Was he employed?

A. He told me that he had a job coming up, and that he was expecting to be called.

Q. You saw him from day to day and night to night?

A. Yes.

Q. He did not work during that time?

A. That is right.

Q. What was his conduct and behavior during that time?

A. It was very good.

Q. By that do you mean that it was sober and well behaved?

A. Yes, sir.

Q. I will ask you if it isn't true that Mr. Robinson was drinking rather heavily during that period?

A. Well he had some, and I had gone out with him for drinks myself.

Q. So you had gone out with him for some drinks?

A. Yes, sir.

Q. So he wasn't the sober man that you just said

411 he was?

A. Well he wasn't tight. Anybody who drinks a little bit gets noisy, I guess.

Q. Well did you get noisy?

A. No, sir.

Q. Did he?

A. No, sir.

Q. Well you said a moment ago that anybody who drinks a little bit gets noisy--

A. Well you do yourself.

Q. I don't drink, so I don't get noisy. Well, Mr. Hill, did you go out with him just one time?

A. Yes, sir.

Q. How many times?

A. Once.

Q. Did you know of his going out when you were not in his company?

A. No sir, I had other work to do in the building there.

Q. Well isn't it a fact that he stayed out frequently

at night until the early hours of the morning?

A. Now I didn't keep in touch with him.

Q. Didn't you know that—

A. (Interrupting) That was none of my business.

Q. Regardless of whether or not it was your
412 business, didn't you have knowledge that he was staying out late?

A. Well I didn't check on that, sir.

Q. But my question is not whether you checked on it or whether it was any of your business, but whether you knew about it?

A. I didn't stay up late at night to find out if he did.

Mr. Hogan: I will ask the Court to have the witness anwer the question.

The Court: Mr. Hill, I think that you, by implication, have answered but you have not made a direct answer. Did you know it whether you found it out or whether it was your business to know—did you know at all?

Witness: No, I didn't.

Q. Did he discuss with you at any time what his business was?

A. He said something about a garbage burner.

Q. And he was there 2½ months?

A. Yes, sir.

Q. Did he seem to have sufficient finances to carry himself?

A. Yes, sir. The only way I knew about it was that he paid his rent the first of the month, and after the landlord came back I didn't have anything else to do with it, and so he was out of my hands.

413 Q. You collected the rent from Robinson only one month?

A. Yes, sir.

Q. Then Mr. Archambeault returned and you did not have anything more to do with the collection of that rent?

A. That's right.

Q. Did any of the other tenants complain of the conduct in the John Ward apartment?

A. No, sir.

Q. Mr. Hill, to refresh your recollection, don't you

recall that on this trip, or on some trip that you were with Mr. Robinson, that you and he went to a bar or grill and Mr. Robinson got into an argument with some fellows?

A. No, sir, I don't.

Q. You don't recall that?

A. No, sir.

Q. Would you say that that did not happen?

A. I don't know; I don't recall that.

Mr. Hogan: That is all.

Redirect Examination by Mr. Inman.

Q. Mr. Hill, did you live in that apartment house at the same time Robinson lived there?

A. Yes, sir.

414 Q. How close was your apartment to his?

A. Right next door.

Mr. Inman: That is all.

J. E. SAUNDERS was called as a witness by the government and, after having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name?

A. Joe Saunders.

Mr. Brown: Mr. Hogan, is Mr. Ross going to be used as a witness?

Mr. Hogan: I am not prepared to say.

Mr. Brown: Well I want him excluded if he is.

Mr. Hogan: Let me talk to him and then I can tell you more about it. (Later) We can't say definitely but there is some probability that he probably will be used as a witness.

Mr. Brown: I think he should be excluded.

The Court: All right, Mr. Ross.

(Mr. Ross leaves the court room.)

Q. Where do you live, Mr. Saunders?

A. 811 Vine Street, Park Ridge, Illinois.

Q. Is that near Chicago?

415 A. That's right—it is a suburb.

Q. In what business are you engaged?

A. Renting automobiles on the Drive-It-Yourself system.

Q. What is the name of your company?

A. The company name is Chicago Automobile Leasing Company, where the trade name is Saunders system.

Q. Is there any other name?

A. Saunders Drive-It-Yourself system.

Q. And that is the name you have over your place of business?

A. That is the trade name, but not the name of the company.

Q. Were you engaged in that business in Chicago in 1934?

A. Yes.

Q. How long have you been engaged in that business?

A. Twenty-seven years last August.

Q. On September 20, 1934, were you in your office in Chicago?

A. Yes, sir.

Q. I will show you this paper and ask you to tell the jury what that is?

A. It is a form we use whenever a new cus-

416 tomer applies to rent a car. It is a credit or identification form, also a rental contract. On this form we accumulate the information about the customer. His physical description, address, place of employment, period of time employed there and references, in an effort to—

Q. (Interrupting) What is the name of the customer who made out or supplied the information for that form?

A. The name given us was John W. Ward.

Q. What address?

A. 4639 Magnolia, Chicago.

A. Have you seen that person since that information was supplied?

A. That is right.

Q. Who was he?

A. Robinson.

Q. Was anyone with him at that time?

A. Yes; his wife.

Q. I show you government Exhibit No. 25 and ask you if you recognize that picture?

A. This seems to be a likeness of the woman that was with him.

Q. Did you wait on Robinson?

A. I did.

Q. At that time?

A. I did.

417 Q. What was the date of that transaction?

A. September 20, 1934.

Q. Will you tell the jury what information Robinson supplied you at that time?

A. He gave me his physical description, of which I could observe, too. Age 27; weight 160; height 6 feet 1 inch; hazel eyes; black hair. He said he lived at the address of 4639 Magnolia; telephone Edgewater 1858. He said he was in Chicago—had been in Chicago about 3 months, and that he was associated with the Western Conservation Company manufacturers of some kind of garbage disposal equipment of some kind; and he said that company was his father's company. He also said he was formerly employed by the Servel Corporation, that is, refrigeration people, at Evansville, Indiana, as an auditor. He gave as reference George R. Archambeault, the hotel manager where he lived, at 4639 Magnolia, the apartment house—furnished apartments. He said he had rented cars from us at Nashville, and also the Matthews Brothers who are engaged in the automobile rental business at Nashville. The Western Conservation Company had an address in Evansville, the Old National Bank Building (the word "old" is a part of the name of the building.) He said John W. Ward, Sr. was his father with offices at the Old National Bank Building.

Q. In what town?

418 A. Evansville, Indiana. He said he had a checking account in the First National Bank at Evansville, Indiana—or a savings account. I don't recall which. He signed this document which was supposed to be a confirma-

tion on his part that the information he gave us was true. And then I also signed the form myself.

Q. Was it signed in your presence?

A. Yes.

Q. By Robinson?

A. That's right.

Q. Did you immediately rent him the automobile?

A. No, I didn't. I spent about a half hour with Robinson at the time.

Q. Why didn't you immediately rent him an automobile?

A. It was against our policies to rent an automobile to any individual who could not give a reference, one reference, that we thought was capable of giving us information as to his general responsibility. He could only give us a reference as the manager of a hotel and his acquaintanceship with that manager was only a period of some 3 months. So we realized that the manager of the hotel would not really be able to intelligently speak of his general responsibility. So as a result of that and in keeping with our policy I told Ward, or Robinson, that we
419 could not rent him a car. He then told me that he had been renting cars at some of our former stations, and especially the one at Nashville, and he spoke merely of the name of one of the employees there who at the time I recalled. So that fact plus the fact that Robinson made a very favorable impression, I finally decided to violate our own rule and give him the car. He further stated he only wanted the car for a matter of a few hours or during the evening. This transaction all occurred around 6:30 in the evening, and that he merely wanted to pick up an aunt who was arriving from Tennessee at the depot, and needed the car to transport the luggage and this Aunt and all of this luggage out to his apartment which was some 6 miles North of the business loop, in Chicago. So, with his selling of himself, you might say, and—

Q. (Interrupting) Now just describe his appearance, Mr. Saunders?

A. Well Ward, or Robinson, at that time was a young man 27 years of age; he had a rather boyish appearance,

and a rather boyish expression, although he was very calm over the situation that I had refused him a car. He did not immediately accept that as a cue to become riled up and excited. In fact he had considerable poise, I thought, and he made a very intelligent conversational talk in order to get the car. He was dressed nicely and not flashy,
420 and he did inspire confidence, very definitely.

Q. And you did violate your own rule and rent him a car?

A. That, plus the fact that his wife was with him and when I called the landlord where he lived the landlord said—

Mr. Hogan (Interrupting): Object.

The Court: Objection sustained.

Q. Well did you get favorable or unfavorable information when you called the landlord?

A. Very favorable.

Mr. Hogan: Same objection.

The Court: Objection sustained. The jury will not consider that answer.

Q. Did you contact any other references?

A. No, sir. There was no other reference that he could give.

Q. What kind of a car did you let him have?

A. It was a 1934 Ford, Tudor sedan.

Q. And I believe when I interrupted you a while ago you were speaking of his wife being with him?

A. That's right.

Q. Will you just go on with that?

A. Well the fact that he had his wife with him, and the impression they both made was just that of a very
421 nice appearing young couple, substantiated by checking on the appearances so far as we could check; and it just seemed that the mere fact that he did not have a reference in Chicago was merely because he had only been there 3 months. He appeared like he would have them if he had been there longer.

Q. Now what kind of an automobile did he get there?

A. A Ford Tudor sedan.

Q. Do you have the full description of that car on that

paper?

A. No, I do not.

Q. Was that car returned to you after a few hours?

A. It was not. We did not see the car again for a matter of weeks.

Q. When did you next see Ward or his picture, Mr. Saunders?

A. Approximately 3 weeks after that. I don't know exactly, maybe a little bit longer, I was in Kansas City and I had an occasion to buy a Kansas City Star and on the front page of the Kansas City Star was an account of the Stoll kidnapping case, and a picture of a man who was suspected, and after I had looked at the picture while riding the streetcar, I finally came to the conclusion that that was the fellow that I had rented the car to in Chicago.

422 So I reported that fact to the FBI in Kansas City, who immediately—

Q. (Interrupting) Now, not what they did, but you did report to them. Is that right?

A. That is right.

Q. Do you recall when that car was returned to you?

A. I don't recall the exact date but I know it was weeks and maybe as much as two months.

Q. I show you that and ask you if that refreshes your recollection?

Mr. Hogan: I have not seen that.

(Mr. Inman hands paper to counsel.)

Q. Does it refresh your recollection?

A. Yes, sir.

Q. Now if that does refresh your recollection, can you now tell the jury when you got that car back?

A. Yes. I got the car back November 9, 1934.

Q. From whom?

A. We got this from the FBI.

Q. Where?

A. At Louisville, Kentucky.

Q. What is the description of that car, Mr. Saunders?

A. Well it is a Ford V 8—

423 Mr. Hogan (Interrupting): Wait just a minute. Let me see that paper again, please (getting paper.)

A. It was a 1934 Ford V 8 coach, Motor No. 574117. They don't have a serial number.

Q. Now immediately after, shortly after September 20, 1934, the day that car was rented, did you have occasion to write a letter setting out the full description of that car?

A. I did.

Q. Does that refresh your recollection (handing paper to the witness)?

A. Very much so.

Q. Will you tell the jury the license number and full description of that automobile?

A. 1934 Ford, V 8, coach, black body, yellow wheels, bearing a 1934 Illinois license No. 331-700.

Mr. Hogan: What is the license number again?

Witness: 331-700.

A. (Continuing) Also a Chicago city license, a windshield sticker, No. 1869890. Motor No. 574117.

Q. And now you said coach. Is that the same or different from a Tudor?

A. That is the same in Ford language.

Q. Is your business confined to Chicago, Mr. Saunders?

424 A. No.

Q. In what parts of the country do you do business?

A. At what time?

Q. 1934?

A. Well most of the middle West.

Q. Was this car insured against theft?

A. No, sir.

Q. What is the situation with reference to that?

Mr. Hogan: I object.

The Court: Objection sustained.

Q. I will ask you to file this original contract with your testimony as Government Exhibit No. 26?

A. All right.

(The document above described was handed to the Reporter, marked Government Exhibit No. 26, and filed with the record.)

Q. Under the terms of the contract agreement between you and Robinson, did Robinson have a right to keep that car as long as he did?

Mr. Hogan: Now wait before you answer that. I object to that.

The Court: Objection sustained. The contract speaks for itself on that point.

Mr. Brown: Just stop now and read that part of the agreement.

425 The Court: Mr. Inman, suppose you and Mr. Hogan see if you can take out the part of the agreement that you want read and agree on it without reading the whole contract to the jury.

(After conference between Mr. Inman and Mr. Hogan:)

Mr. Hogan: The government has indicated that it desires to read the first literary paragraph of the exhibit which appears in bolder type than the rest of the exhibit.

Q. Will you read that paragraph?

A. Yes. "I agree to return the automobile within eighteen hours of the time let, and to pay the company from which the automobile is rented promptly when due all charges which have accrued from such rental, and to return the car to them in good condition, ordinary wear and tear excepted. Should any damage occur to the car while in my possession, I agree to pay the reasonable damages necessary to put the car in the same condition as when received by me."

Q. Did he return that car within 18 hours?

A. He did not.

Q. Did he pay over-charges on it?

A. He did not.

Mr. Inman: That is all.

426 Cross-examination by Mr. Hogan.

Q. Mr. Saunders, you say you operated these systems in the middle West?

A. I was interested some in the middle West, outside of Chicago.

Q. You had one at Louisville at that time, I believe, didn't you?

A. No. I had sold the one in Louisville prior to 1934.

Q. Did you have one in Nashville in 1934?

A. No, sir, prior to that.

Q. Had you had one there before that?

A. Yes.

Q. *And when did you dispose of your interest in the* one in Nashville.

A. In 1931.

Q. Did you have managers at these various locations?

A. That is right.

Q. Who was your Nashville manager?

A. Frankly I forget his name now. I had 85 of them scattered around over the country, and there were considerable changes.

Q. Was it not Charles Matthews?

427 A. At one time Charles Matthews was our manager.

Q. To the best of your recollection, was he your manager at the time you discontinued the Nashville station?

A. No, I don't think so.

Q. Now, when Robinson and you were discussing the financial status or Robinson and you were turning over in your mind whether or not to allow him to have one of those cars, didn't he advise you then that he knew Mr. Matthews of Nashville?

A. Yes, he did.

Q. I believe he told you on that occasion that he and Mr. Matthews lived in the same block there in Nashville?

A. I don't recall that part.

Q. And you, of course, at that time knew Mr. Matthews, didn't you?

A. I had not seen him for a number of years at that time.

Q. You knew who he was, didn't you?

A. Yes.

Q. Did you make inquiry of Mr. Matthews about this boy?

A. No.

Q. You did discuss this matter for at least 30 minutes with him?

A. Approximately.

428 Q. You took a chance on him?

A. That's right.

Q. He sold himself as you said?

A. That is right. He made a very *favorable impression.*

Q. He made a better impression than the average or ordinary young man, did he not?

A. That is right.

Q. Did he evidence any natural salesman talk or ability—natural or unnatural, I will say?

A. Well I will say that he did. And in his mannerism and in the general way he conducted himself. He wanted the car and he wanted to sell me on the idea of renting the car to him, and he did.

Q. And he was very suave about it?

A. Yes, and a little sort of Charles Ray boyish attitude.

Q. Now by Charles Ray, do you refer to the movie actor?

A. That is right.

Q. Charles Ray at that time was very prominent as an actor?

A. That is right, as interpreting the character of these younger men in small communities—yes.

Q. And he was very attractive, then, wasn't he?

429 A. He was that.

Q. More so than he is today, nine years later?

A. That is right.

Q. Considerably more so?

A. Yes, sir.

Q. You say this car had a black body?

A. That is right.

Q. And what color wheels did it have?

A. Yellow.

Q. Now did you report the car as missing to the Chicago police or any other enforcement officers?

A. I did.

Q. You did not state that on direct examination. Was there any reason for withholding that information?

A. I don't think I was asked that question.

Q. Was it put out over the radio that that car was missing?

A. Whether or not the authorities did that, I don't know.

Q. When did you report it as missing?

A. Probably the next day—maybe the second day.

Q. Well did you wait the 18 hours, specified in that agreement?

A. Very definitely.

Q. You knew from his mannerisms and his voice
430 that he was not an Illinois person?

A. That is right.

Q. Did you detect from his speech or his mannerisms that he was a southerner?

A. I did.

Q. And you knew that he knew Mr. Matthews who had formerly worked for you?

A. He did tell me that—that is right.

Q. Did you ever make any inquiry of Mr. Matthews about a boy or a man meeting the description of this man here?

A. No, sir.

Q. You did not do that?

A. Not that I recall.

Q. Well you would recall it if you had?

A. I think so.

Q. Wouldn't that have been the logical thing to have done.

A. You are right.

Q. You did not check at any time, subsequent to the time he rented the car or that it was missing, whether or not John Ward had lived in Nashville, Tennessee, in the same block with your Mr. Matthews?

A. I checked a number of Wards in Nashville—in fact—that letter you saw is a copy of one of the letters that I wrote to one of the Wards.

431 Q. But did you inquire of anybody in Nashville in the residence block in which your Mr. Matthews resided as to a man meeting the description of this man?

A. I did not know where Matthews lives or did live in Nashville.

Q. You could have easily determined that, could you not?

A. That is right.

Q. You could have put in a long distance call and determined that?

A. Correct.

Q. Did you do that?

A. I did not.

Q. Did the Chicago police or detectives or any law enforcement officers of Cook County, Illinois, ever find any trace of that car or report back to you its location?

A. They did not.

Q. They did not?

A. I do not believe that the Chicago police gave us the final information as to the recovery of the car or where it was recovered. I think we got it from the FBI. I may be in error on that.

Q. That was November 9, 1934?

A. That was the date we received the car back in Louisville. We might have been notified a day or two sooner.

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432 JOHN H. ROHMAN was next called as a witness in behalf of the Government, and being duly sworn was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. John H. Rohman.

Q. Where do you live, Mr. Rohman?

A. 2019 Sherwood Avenue.

Q. Here in the City of Louisville?

A. City of Louisville.

Q. During the year 1934—

Mr. Hogan: (Interrupting) I object to this witness testifying because his address is shown to be 2019 Sherwood Avenue, Jefferson County, Indiana.

Mr. Brown: Technically, that is correct. It was obviously an error. You may stand down.

J. E. BOSLER next called as a witness in behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. Joseph E. Bosler.

Q. During the year 1934, Mr. Bosler, what busi-
433 ness were you in?

A. Tyler Hotel business.

Q. Were you the owner or operator of the Tyler Hotel?

A. Yes, sir.

Q. Had you been in that business for a number of years?

A. Since 1915 to 1940.

Q. I will show you two cards and ask you what they are.

A. These are guest registration cards.

Q. What Hotel?

A. Tyler Hotel, Louisville.

Q. Do you recognize those as two of the guest registration cards used by you at your hotel?

A. Yes, sir.

Q. Would you take the first one, the earliest date, and tell the jury the date of the registration and the name that appears thereon?

A. September 7th, John Ward.—

The Court: What year, please?

Mr. Brown: We will have to get that later.

A. The year is not on the card, Your Honor. (Continuing) 211 Union Avenue, Memphis, Tennessee. You want the second one.

434 Q. That's the first one. Let's introduce this and mark it for identification as Government Exhibit 27.

Mr. Hogan: That's objected to unless they connect it up with some year.

Mr. Brown: We certainly will connect it up. We are marking it merely for identification.

The Court: It is understood the year will be supplied.

(The registration card referred to was *handed* to the reporter and marked for identification Government Exhibit No. 27.)

Q. All right, what is the next one?

A. The next one is October 8th, registrant John Ward, 211 Union Avenue, Memphis, Tennessee.

Mr. Brown: Let's introduce this and mark it for identification as Government Exhibit No. 28.

(The registration card referred to was handed to the reporter and marked for identification Government Exhibit No. 28.)

Q. Now, Mr. Bosler, will you examine both of those cards and tell the jury the price room and type room that was assigned to the registrant on that card?

A. On September 7th this room 625 is a room on the North hall with shower bath at $1.75 a day. On October 8th, the room 529 is also a room on the North hall with shower bath at $1.75 a day.

435 Q. Could you tell the jury whether the charge of $1.75 indicates to you, with reference to the year, what year it may be?

A. Yes, sir, it does, because all our rooms heretofore were always $2.00 and up per room per day with bath.

Q. From that information contained on that card, what in your best judgment is the year as disclosed by those registrations and the indication thereon.

A. It is the year 1934.

Q. Of course, you do not know who signed the name of John Ward—I mean personally.

A. No, sir, I do not.

Mr. Brown: I would like to introduce those as Government Exhibits 27 and 28.

(The registration cards heretofor marked for identification were handed to the reporter and are filed with the record as Government Exhibits 27 and 28.)

Q. Do you recall the kidnapping of Mrs. Stoll?

A. Yes, sir.

Q. To whom were those cards delivered and when?

A. To an FBI agent.

Q. When, with reference to the kidnapping?

A. Well, I wouldn't know the exact number of days, but it was within a month, I am sure.

Q. After?

A. After the abduction.

436 Q. At that time were they the regular and usual card records of the Tyler Hotel?

A. Yes, sir.

Q. Were they current for that period at that time?

A. Yes, sir.

Mr. Brown: You may ask the witness.

Mr. Hogan: Your Honor, I submit that the identification of these cards has not been established that they were used in the regular course of the business.

Mr. Brown: I asked him and he said they were.

The Court: Was it the regular course of business of the Tyler Hotel at that time, Mr. Bosler, to have and keep cards of that kind for guest registration?

The Witness: Yes, sir.

The Court: And were those cards which you have there made and kept in the regular course of business of the Tyler Hotel at that time?

The Witness: Yes, sir.

The Court: Any further objection on that score?

Mr. Hogan: No further objection on that particular point.

Cross-examination by Mr. Hogan.

Q. In the regular course of business of the Tyler Hotel at that time, wasn't it the usual course to affix the

437 year of the registration as well as the month and day.

A. No, not the usual thing; no, sir.

Q. Was it customarily done?

A. No, sir.

Q. You mean that you then permitted just the month and day to be inserted on the card?

A. On the individual card, but when this card was filed according to a room number it was filed according to the month and the year.

Q. Then you have *another* record that you have not brought to court.

A. No, just the file box would be the only record, but that would show the month and the year together.

Q. But I say, you do have another record, or did have at that time another record that if you had it here would establish the year?

A. That's right.

Q. You did not bring that with you.

A. No, sir. That was not taken at the time that these cards were taken, so, of course, it is not in existence at this period.

Q. You mean it has been destroyed?

A. I would say so, after nine years, yes, sir.

Q. When did your rates increase for that type of room from $1.75 to $2.00?

A. To $2.00?

438 Q. Yes.

A. Well, of course, the exact date I could not say again, but then as soon as the depression was over, naturally the rates went up.

Q. Without trying to pin you down to an exact month or day, what is your best judgment as to the time after the date there?

A. I would say within the next year, possibly year and a half, these same rooms would go back to $2.00 at least.

Q. Had those rooms formerly been $2.00?

A. Yes, sir, and even higher.

Q. When did you lower them $1.75?

A. There again, I can't give you the exact date, but it would be probably in '32 or '33.

Q. You did not see the man who wrote that name on there.

A. No, sir.

Q. You are not able to identify that person or anybody who is purported to have written that name on there?

A. No, sir.

Mr. Hogan: That's all.

Mr. Brown: That's all.

WILLIAM A. GROVES was next called as a witness for the Government, and having been first duly sworn was examined and testified as follows:

439 Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. William A. Groves.

Q. Where are you employed?

A. Southern Bell Telephone & Telegraph Company.

Q. How long have you been employed there?

A. About forty-one years.

Q. In what capacity are you employed?

A. Commercial representative.

Q. I'll show this book and ask you to tell the jury what it is.

A. Telephone directory of listed subscribers in the City of Louisville and Jefferson County, and part of Oldham County.

Q. For what period of time?

A. This book was an issue of June, 1934.

Q. Does that give the names and addressess and telephone numbers of the subscribers to the Southern Bell Telephone & Telegraph Company in Louisville and surrounding territory as of October, 1934?

A. It would.

Q. Will you refer to Page 164 in that book and tell the jury if Stoll, Berry V. is listed there.

A. Yes, sir.

Q. Will you read that complete entry?

440 A. Stoll, Berry V., R, which signifies residence. Lime Kiln Road, telephone No. East 2941.

Q. Does the entry Stoll, Charles C. appear on that page?

A. Yes, sir.

Q. Will you read that complete entry?

A. Stoll, Charles C., residence 2535 Cherokee Parkway, Highland 0701.

Q. Does the entry Stoll, George appear there?

A. Yes, sir.

Q. Will you read that complete entry?

A. Stoll, George, residence 2539 Cherokee Parkway, Highland 1328J.

Q. I will ask you to file that telephone directory with your testimony and mark it Government Exhibit No. 29.

A. I do.

(The telephone book referred to was handed to the reporter and filed with the record as Government Exhibit No. 29.)

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. What does the suffix "J" after "Highland 1328" indicate?

A. It would be a party line.

Q. Does Highland 0701 indicate a straight line
441 or private line?

A. Individual line; yes, sir.

Q. Does "East 2941" indicate an individual line?

A. Individual line.

Q. Is a party line or was a party line then less expensive than a straight line?

A. Oh, yes, a party line is always less expensive.

Q. Was it then?

A. It was.

Q. So Mr. George Stoll had a party line or a less expensive line than Berry V. Stoll or Charles C. Stoll.

A. Yes, sir.

Q. What was the difference in the monthly rental or charge of a straight line as distinguished from a party line at that time?

A. At that time I think there was a differential of one dollar.

Mr. Hogan: That's all, Mr. Groves.

Mr. Inman: That's all.

ELLA SCHAAF was next called as a witness for the Government, and having been duly sworn was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

442 A. Miss Ella Schaaf.

Q. Where do you live?

A. At Snellville, Indiana. That's my home town.

Q. In October of 1934, where were you employed?

Mr. Hogan: I object to that for her residence is shown to be 2139 Edgehill Road, Louisville, Jefferson County, Kentucky.

Q. Do you live there now?

A. Now I live there.

Q. At 2139 Edgehill Road, Louisville?

A. Yes, that's where I work now.

Q. Is that where you live?

A. That is not my home town.

Q. Not your home town, no.

A. I live there now. I work there now.

Q. Your room is there?

A. Yes, sir.

Mr. Hogan: I still object, Your Honor.

The Court: How much time do you spend there? Do you sleep there?

The Witness: Sleep there.

The Court: Take your meals there?

The Witness: Yes, sir.

The Court: And you merely go back to Snellville, Indiana on visits?

The Witness: On visits, and in the summertime

443 on vacations.

The Court: At the present time and for a month or so past you have been living here at this—

The Witness: I went down to my country town Sunday.

The Court: Just for a visit?

The Witness: Yes.

The Court: A day or two?

The Witness: A day.

The Court: Other than that you have been living regularly at this address here in Louisville.

The Witness: Yes, sir.

The Court: Objection overruled.

Mr. Hogan: Let's determine when she took this residence here in Louisville.

The Court: Go ahead.

Mr. Hogan: This is without prejudice or waiving any of my rights to object to her as a witness, Your Honor.

The Court: Yes.

Mr. Hogan: When did you first start coming to this address at Edgehill Road in Louisville?

The Witness: I worked there nine years before this happened.

Mr. Hogan: No, I mean with reference to the present time, have you been back in Indiana subsequent to
444 October, 1934? When did you come from Indiana to work at this Edgehill Road address?

The Witness: Six years.

Mr. Hogan: And what is your address that you work at here at Edgehill Road?

The Witness: 2139.

Mr. Hogan: Have you been working continuously at that address for six years?

The Witness: Except vacations.

Mr. Hogan: Who lives at that address?

The Witness: H. B. Caldwell.

Mr. Hogan: What is Mr. Caldwell's business?

The Witness: Ohio Sand Company.

Mr. Hogan: You say, except for visits or vacations to your home town—

The Witness: Or sickness. When I was sick I would go home.

Mr. Hogan: All right, I will leave whether or not she may testify to Your Honor, to rule upon.

The Court: I think the objection should be overruled.

Mr. Hogan: Exception.

Q. (Mr. Inman continuing) In October of 1934, where did you work, Miss Schaaf?

A. What?

Q. In October of 1934, where did you work?

445 A. C. C. Stoll's residence.

Q. Where was the C. C. Stoll residence?

A. 2535 Cherokee Parkway.

Q. In Louisville, Kentucky?

A. Louisville, Kentucky.

Q. Was there any other entrance to that house, other than 2535 Cherokee Parkway?

A. Yes, sir.

Q. Where was the other entrance?

A. 2520 Longest Avenue.

Q. Which entrance was usually used by the family and friends of the family?

A. 2520 Longest.

Q. Is there any particular reason for that?

A. Yes.

Q. What was it?

A. On account of the steps. They had more steps to go the front way, 2535 Cherokee Parkway were more steps to climb than 2520 Longest.

Q. Do you recall the occasion of the kidnapping of Alice Speed Stoll?

A. Yes, sir.

Q. A short time prior, a day or so prior to that kidnapping, did anyone come to the door at 2535 Cherokee Parkway?

A. Yes, sir.

446 Q. Do you recall what day that was?

A. It was two days before it happened, the kidnapping happened.

Q. Two days before the kidnapping?

A. Yes, sir.

Mr. Hogan: Now that's objected to. I would like the

witness to designate the day and the month.

The Court: Yes, instead of describing it that way, Miss Schaaf, can you give the approximate date of the month?

The Witness: It was October 8th.

Mr. Hogan: That's still objected to, unless she gives the year.

The Witness: 1934.

Q. Did you answer the door?

A. Yes, sir.

Q. Who was there at the door?

A. A man, said he was a telephone man.

Q. What did you say to him?

A. Well, I said to him, "Our telephone was not out of order," and he said he was a lineman, he wanted to use the phone to call out on the line, and I said—

Mr. Hogan: Now, that's objected to. She merely said a man.

Mr. Brown: We will have to get to it and we will connect it.

447 The Court: If the Government indicates that this man will be identified—

Mr. Brown: He will be.

The Court: — as participating in this case, making the evidence competent, it may be admitted with that in view. Unless that assurance is given, of course, the objection should be sustained. Will the witness identify the man?

Mr. Brown: Yes, sir.

Q. Have you seen the man since?

A. Yes.

Q. Who was he?

A. Robertson Thomas, the kidnapper — Roberts Thomas.

Mr. Hogan: That's objected to.

The Court: Yes, the description which you gave him as your own will be ignored by the jury and the objection to that description will be sustained, but you can tell if you know the man's name or if you see him here in the court room.

The Witness: Yes, I see him.

The Court: Who is he?

The Witness: The kidnapper.

The Court: Miss Schaaf, I told you once and I will tell you again, I don't want you to describe him in that way. You can tell his name. The jury will not consider that description that this witness gave of the man she
448 referred to.

The Witness: Thomas Robinson, Jr.

Q. Miss Schaaf, what conversation did you have with Robinson there at that door? Just go on with your conversation.

A. Well, he wanted to come in and use the telephone, and, as I told you, I told him the telephone was not out of order, and he said he was a lineman. So I said, "How do I know you are a telephone man," and he reached in his pocket and said, "I can show you a card." So he drawed his card and held it up and showed it to me.

Q. Where was he at that time?

A. He was on the outside of the screen porch and I was on the inside of the house behind the screen door. I couldn't read it, but I seen he had a card.

Q. Were there two doors between you?

A. Yes, two doors between us.

Q. And the width of the porch?

A. Yes, the width of the porch.

Q. Did you read that card?

A. I couldn't read it.

Q. What did you do after he showed you a card?

A. I said, I had orders not to let anybody in the house unless I knew who they were, and he said, "That's right, Lady. You never know when you let a crook in." That's the words he said.

449 Q. Did you then let him in the house?

A. Then I let him in.

Q. What did he do?

A. He went to the telephone and called.

Q. How long was he there?

A. A very few minutes; I judge three minutes.

Q. What was his appearance with reference to his dress? How was he dressed?

A. Well, he was dressed in a striped suit, as far as I can recall.

Q. Did he have on work clothes of the ordinary lineman?

A. No.

Mr. Hogan: She said he had on a striped suit.

A. Dress suit.

Q. Where is the C. C. Stoll residence with reference to the George Stoll residence?

A. Right next door.

Q. Was Mr. C. C. Stoll home at that time?

A. No, sir.

Q. In what business was Mr. C. C. Stoll engaged at that time?

A. In the Stoll Oil Company.

Q. In the Stoll Oil Company?

A. President of the Stoll Oil Company, the owner, I guess.

450 Mr. Inman: That's all.

Mr. Hogan: Now, if Your Honor please, the Government promised to connect up the identity with this man. Now they have not sufficiently done that.

The Court: She has testified twice it was Robinson.

Mr. Hogan: Your Honor please, she said the man was Thomas Robinson, Jr., but she has never identified that name with any person.

The Court: Can you identify the man that came to the door with anybody you see?

The Witness: With anybody?

The Court: Yes. You gave a name, but do you see anybody that was that man that came to the house?

The Witness: He is sitting right there.

The Court: Where?

The Witness: Right there.

The Court: You mean next to Mr. Hogan?

The Witness: Yes, sir, with the glasses on.

The Court: With glasses on.

Mr. Hogan: You mean this man over here?

The Court: No, right next to you.

Mr. Brown: I think the record should show she pointed

out Thomas Robinson, Jr.

Mr. Hogan: I don't want the Government to supply evidence.

The Court: I think it can be agreed upon by all
451. of us. If it can't, I will get the witness to go down and place her hand on the shoulder of the man that she has in mind. Do you mean the man sitting next to Mr. Hogan there?

The Witness: That's right.

The Court: Who is the defendant in this case?

The Witness: Yes, sir.

Cross-examination by Mr. Hogan.

Q. Miss Schaaf, do you read, or are you able to read?

A. Yes, sir.

Q. Did you read this card that he presented to you at the screen?

A. No, I couldn't see that far to read.

Q. What was the distance that you were from that card?

A. Well, I would say from here to Mr. Inman.

The Court: About ten or twelve feet?

The Witness: Yes, sir.

The Court: Is that agreed on by counsel?

Mr. Hogan: That's about right, Your Honor.

Q. Well, now, if you couldn't read that card, how are you able to tell this jury that it was a telephone identification card?

A. Well, I just took his word.

452 Q. Then you didn't read on that card that anything that had the words Southern Bell Telephone Company.

A. No.

Q. To what part of the house did he go after you admitted him?

A. The middle part, where the telephone was.

Q. How many telephones were in that residence?

A. One up and one down—downstairs.

Q. Did he make any inquiry as to the whereabouts of C. C. Stoll?

A. No.

Q. Did he mention his name?

A. I don't recall that.

Q. Did he ask you if Mr. Stoll was home?

A. No.

Q. Did he ask you where Mr. Stoll was?

A. No. No, sir.

Q. Did he ask you what Mr. Stoll's business was?

A. No, sir.

Q. Then he did not ask you anything pertaining to Mr. C. C. Stoll?

A. No, sir.

Q. Did he ask you anything pertaining to any member of the other Stoll families?

A. No, I don't recall it.

453 Q. He was just there from two to three minutes at the most?

A. That's what I judge.

Q. Did you go with him when he presumed to be inspecting the phones?

A. I was right with him.

Q. Was there anything unusual in his conduct?

A. No, not as I recall.

Q. Was he nervous or excited?

A. I don't know.

Q. Did he appear to be?

A. What is it?

Q. Did he appear to be nervous and excited?

A. Not as I noticed.

Q. Were you nervous or excited?

A. I was.

Q. Did you have any cause to be?

A. No, but I always was when anybody came to the door.

Q. You were nervous and suspicious, yet you admitted this stranger.

A. No, I wasn't suspicious at all.

Q. Well, you had some suspicion about his identity, did you not?

A. No, I didn't know anything about him.

454 Q. You didn't admit him on his first attempt to get in, isn't that true?

A. What is that?

Q. When he first came there, you didn't admit him just readily?

A. Well, I had orders not to let anybody in unless I knew them.

Q. I mean, you didn't do that. You made him stand there for a moment and identify himself.

A. Sure.

Q. So you did have some question in your mind as to his identity or right to be there, isn't that true? What is your answer?

A. I didn't quite get that.

Mr. Hogan: Will you read the question?

(Question read by the reporter, as follows:

"So you did have some question in your mind as to his identity or right to be there, isn't that true?"

A. Well, after he said he was a telephone man, I just took for granted he was one.

Q. After he left, did you dismiss that fact from your mind?

A. Yes.

Q. Did you tell anybody about it?

455 A. When the people came home they asked was anybody there to see them. I said, "Nobody but the telephone man."

Q. Did they take any further steps to find out who that was?

A. Mr. Stoll asked me, "Did he show you any badge or card that he was a telephone man?" And I said, "Yes, he showed a card, but I couldn't read it being I was in the house and this man was on the outside of the screen porch." He said, "Well, I think you did right not to let him in unless he showed you something."

Q. So you were satisfied and they were satisfied that he had a right to be there, is that correct?

A. I don't know.

Q. You must have been satisfied that he had a right to be there or you wouldn't have admitted him, is that

correct?

A. I don't quite get that, either.

Q. You must have been satisfied that he had a right to be there else you would not have let him in the house.

A. Yes, after he showed me this card.

Q. Well, he showed you some card that you were not able to read.

A. Yes.

456 Q. And you took a chance on that card being genuine.

A. Yes.

Mr. Hogan: That's all.

Mr. Inman: That's all.

The Court: You say he used the phone while he was there, Miss Schaaf?

The Witness: Yes.

The Court: Did he just examine the phone or did he use it?

The Witness: He took the receiver off and turned his back to me. I don't know did he have the clip down or whether he was talking. I couldn't say that, but he had the phone in his hand.

Q. (Mr. Hogan continuing) What was his conversation?

A. I can't say. I can't recall.

Q. To whom do you recall that he addressed his remarks?

A. Well, I don't know. I didn't hear that either.

Q. How far from him were you when he was using this phone?

A. I would say from here over to there.

Q. From your witness chair to the jury box?

A. Yes.

457 Q. Which is eight feet—is that about right?

The Court: Approximately so.

Mr. Inman: Yes, that's agreed, that's about right.

Q. How long did this conversation over the phone take place?

A. No time at all.

Q. You mean he didn't talk to anybody?

The Court: She said no time.

Q. Did he say many words or just have a brief conversation?

A. He didn't have no conversation. No, I couldn't understand a word he said. He talked in such a low tone that I couldn't get a word he said.

Q. He appeared to be talking to someone?

A. Yes, he acted like he was talking to someone. I don't know did he or not, but he had the phone in his hand.

Mr. Hogan: That's all.

Mr. Inman: That's all.

The Court: Members of the jury, we will take the mid-morning recess at this time. Move about and make yourselves comfortable, but do not discuss this matter among yourselves or with anyone or allow anyone to talk about it in your presence. Mr. Marshal, give us a ten minute recess.

458 A short recess was taken at this time after which the hearing was resumed as follows:

MRS. GEORGE STOLL was next called as a witness in behalf of the Government, and having been duly sworn was examined and testified as follows:

The Court: Just a minute before you begin, Mr. Brown, are there any witnesses in the court room? I want to keep reminding the Marshal at the door that no witnesses during the trial are to be allowed in the court room. Inquire of everyone who enters, whether or not they are a witness.

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. Mrs. George Stoll.

Q. Where do you live, Mrs. Stoll?

A. 2539 Cherokee Parkway.

Q. Here in Louisville?

A. Louisville, Kentucky.

Q. How long have you lived at that address?

A. Twenty-eight years.

Testimony of Mrs. George Stoll

Q. Were you living there during the month of October, 1934?

A. We were.

Q. With your husband and family?

A. That's right.

459 Q. Were any other members of the household at that time besides your husband and your children?

A. My mother and father.

Q. They were both living there at the time?

A. Living with me.

Q. Do you recall the date of the kidnapping of Mrs. Alice Speed Stoll?

A. I do.

Q. A short time prior thereto, had anyone come to your home?

A. There was.

Q. Just describe the occurrence that happened there and with reference to the date, if you recall the date of the kidnapping, tell when it happened.

A. It was just a short time before the date of the kidnapping there was supposedly a telephone man who came to see the phone.

Q. Who left the man in, Mrs. Stoll?

A. My small daughter.

Q. How old was she at the time?

A. Nine years.

Q. Did you hear the door bell ring?

A. I did.

Q. Did you start for the door?

A. I did, but she ran ahead of me and opened the
460 door in a childlike way.

Q. Then what did this man do?

A. When I saw him Martha was going up the steps and I understood he was a telephone man and followed him.

Q. Where was your telephone located at that time?

A. On the second floor.

Q. Now, when you first saw this man, where was he in the house?

A. He was going up a few steps in the hallway.

Q. Did you immediately follow him?

A. I did.

Q. Where did the man go, Mrs. Stoll?

A. He went to the top of the steps and went into the first room right off of the hall where the telephone was.

Q. When he saw you, what questions did he ask you?

A. I cannot recall any questions that he asked.

Q. Do you know the man that came to your home as you have testified to about the telephone?

A. Do I know him?

Q. Yes, do you know who that man was?

A. I think I do, yes.

Q. Can you identify that man?

A. I can.

Q. If that person is in the court room, would you point him out and tell the jury who it is?

A. Yes, I could.

461 Q. Please do so.

A. Sitting to the right or to the side of Mr. Hogan.

Q. That's the man that came to your home?

A. Came to our home.

Q. Who else was in the house at that time?

A. My mother and the maid, and Martha Jean, my daughter, small daughter.

Q. What did he do at the telephone, Mrs. Stoll?

A. I could not say. It was a very short period, his back was toward me, but he went into the room a very short time.

Q. Where did you stand with reference to where he was in the room by the telephone?

A. I should say I was about two feet from him.

Q. Then what happened?

A. Then he left the house and I followed him, and as I reached the lower floor and he was going out the door I asked him what was the difficulty with the phone because we had made no report of any trouble with the phone.

Q. And what answer, if any, did you get?

A. He said that there had been a complaint, that there had been too many phones on this circuit.

Q. At that time did you have a party number, do you recall?

A. Yes.

Q. Is that the last time for a period of time that
462 you saw this man?

A. I have seen him since.

Q. When did you next see him after that occasion, in person?

A. October 13th of 1934.

Q. Of 1943?

A. 1943—beg your pardon.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Had this man who you say came there posing as a telephone man, ever been in your home before, so far as you know?

A. Before the time of the kidnapping?

Q. Before the time that he came to your home to look at the phone, as he told you?

A. He had not.

Q. You said he went, after being admitted, directly to the phone?

A. He was led by my little daughter to the phone and I followed him.

Q. Didn't you say on direct examination, Mrs. Stoll, that he went up there and into the room directly to the phone?

A. With my little daughter leading him.

Q. Was your little daughter in front of him or
463 behind him?

A. Yes, she was in front of him.

Q. How was this person dressed on the occasion that he went up to look at the phone in your home?

A. Very well groomed.

Q. Do you recall what type of clothes he had on?

A. I think he had on a striped suit, as I recall it.

Q. Do you recall what day of the month it was?

A. I am not— I can't tell you definitely, but it was just a short time before.

Q. By short time, do you mean a week?

A. It was within a week.

Q. With reference to October 10th, 1934, can you fix the approximate date that he was in your home?

A. It was within a few days.

Q. Did you have a conversation with him?

A. I can't recall of any conversation going up the stairs, but the one coming down and passing out of the hallway.

Q. What was that conversation?

A. Asking him what the difficulty was, that I had not reported any trouble on the telephone.

Q. Did that create any suspicion in your mind as to his authenticity?

A. It seemed strange to me.

464 Q. Did you watch him as he left your home?

A. I did.

Q. And for how long did you watch him?

A. Until he passed down the steps, out to the street.

Q. When he got to the street, did he walk or get into an automobile?

A. Got into an automobile.

Q. And what type of car was that?

A. I couldn't tell you. It was not a telephone operator's car.

Q. Just a privately owned automobile or private automobile?

A. It was a private automobile.

Q. Do you recall the color of that car?

A. I do not.

Q. Were there any outstanding features about the car that made an impression upon you?

A. No. It was too far away from the house.

Q. How far away from the house was the car parked?

A. Well, it was across the street—the parkway.

Q. Cherokee Parkway is that street in Louisville that intersects Cherokee Road, does it not?

A. Yes.

Q. There at the monument?

465 A. No, at the entrance to the park.

Q. Did you dismiss it from your mind or did the fact that this man had been in your home weigh on your mind?

A. I dismissed it to a certain extent, but thought that this man—I suspicioned something because he was not in the usual telephone uniform or whatever type of clothes a telephone man uses.

Q. And I suppose you likewise suspicioned it because he didn't have one of those little telephone type of cars that usually and customarily are used by telephone people.

A. His attire was what caused me to think there was something different in this case.

Q. Did you notify the authorities about this strange, suspicious man or this suspicious instance?

A. Not at that time.

Q. Did you at any time?

A. Yes.

Q. When?

A. Later.

Q. When?

A. I couldn't tell you that.

Q. How much later?

A. I couldn't tell you that. I don't recall. It has been so long ago.

466 Q. You have some idea as to the number of hours or days, do you not, Mrs. Stoll?

A. No, I couldn't answer that question.

Q. What was the occasion of your reporting it to the authorities?

A. For the fact that we had not had any complaint and for the fact that the same thing had occurred at the home of C. C. Stoll.

Q. Had you known that this same thing had occurred at the C. C. Stoll home?

A. I learned later, yes.

Q. Did you have that information or knowledge at the time you reported it to the authorities?

A. Yes.

Q. Now when did you learn from the C. C. Stoll family that a similar occurrence had taken place at their home?

A. I couldn't answer that. I don't recall.

Q. Was it before October 10th or after October 10th, 1934?

A. I couldn't tell you. I couldn't answer that question because I do not recall.

Q. Was it within a week.

Mr. Brown: She has answered it in several ways that she does not recall. I don't know that there could be any more complete answer.

467 The Court: Is the witness able to give any approximate idea?

The Witness: I am sorry, Your Honor, I could not.

Q. You did not report it the very day that this man was there?

A. I could not answer that question.

The Court: I think the witness has answered four or five times that she just doesn't remember when it was that she reported it.

Mr. Hogan: She did say that, Your Honor, but I—

The Court: She said it four or five times, hasn't she?

Mr. Brown: Yes, sir.

Mr. Hogan: That's all, Mrs. Stoll.

Re-direct Examination by Mr. Brown.

Q. A couple of questions I overlooked, Mrs. Stoll, with reference to the C. C. Stoll residence where is your residence located?

A. Right next door.

Q. On the day in question that you have testified about, what entrance did this supposed telephone repair man enter?

A. The Parkway entrance.

468 Q. Is that from Cherokee Parkway?

A. Cherokee Parkway entrance.

Q. Is that the usual entrance that your friends and invited guests enter?

A. They enter both entrances.

Q. With reference to the number that use the Cherokee Parkway entrance and the Longest Avenue entrance, which

is the customary entrance?

A. The Longest Avenue entrance.

Recross-examination by Mr. Hogan.

Q. Mrs. Stoll, you determined at that time that the car that the gentleman was using was most likely not a telephone car.

A. Yes.

Q. Did you attempt to get the license number from that car?

A. No. As I say, I was too far away from it.

Q. Were you able to see the color of the license, whether or not it was a Kentucky license or foreign state license?

A. I could not.

Mr. Hogan: That's all.

Mr. Brown: That's all.

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469 H. C. KOTTKE was next called as a witness in behalf of the Government, and having been duly sworn was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. H. C. Kottke.

Q. Mr. Kottke, were you living in Louisville during the year 1934?

A. Yes, sir.

Q. What business were you in?

A. In the automobile sales and service.

Q. Where was your place of business located in 1934?

A. 1114 Bardstown Road.

Q. Are you still in the automobile business?

A. No, sir; I am in defense work now.

Q. I will draw your attention to the month of October, 1934, and ask you if anyone came to your place of business seeking directions to Lime Kiln Lane.

A. Yes, a well dressed young man came in there.

Q. What day was that, Mr. Kottke?

A. Well, it was on the 10th of October.

Q. About what time of the afternoon or morning?

A. Just about 2:00 o'clock.

470 Q. Suppose you tell the jury—2:00 o'clock in the afternoon?

A. Yes, sir.

Q. Tell the jury what happened that afternoon.

A. Well, this young man came in the office, or he was there when I came in, I had been to bank, and I drove in the driveway and put my car in the garage and come into the office and he was there then.

Q. What did he ask you, Mr. Kottke?

A. He asked me, he said, "Can you direct me to Lime Kiln Lane? I have stopped at a gas station, but they couldn't tell me."

Q. What answer did you make to that, Mr. Kottke?

A. I was somewhat confused about the Lime Kiln Lane, and we also have here in Louisville a Tile Factory Lane, and I couldn't get it in my mind which was which, so I took the City Directory and looked in the back, thinking it might give me a clue, you know, in the back of the directory, where Lime Kiln Lane was, but, of course, it is out in the county and it didn't give it. So then I took the telephone directory, the criss-cross directory and that usually goes a little bit further out in the county, and I tried to find Lime Kiln Lane listed there, but I couldn't find that. So I asked him, when I couldn't find out, I asked him, "If you will tell me who you want to see, I'll

471 be able to tell you just about where he lives because I am pretty well known here in this town here." So he said, "Yes, Berry V. Stoll," and he mentioned that name very plainly, Berry V. Stoll. I said, "Oh, the oil man!" He said, "Do you know him?" I said, "Well, I don't know him, but I do know his brother George very well," and I said, "Well, now, he wouldn't live on Tile Factory Lane because that is a very poor section of the county and it is mostly negroes and very poor people live there," and then it dawned on me Lime Kiln Lane is up towards Harrods Creek. And during the conversation he brought out the fact

that he had been there some months ago but he lost the direction of it.

Q. What with reference to the telephone conversation —did you offer to telephone?

A. Yes. To make sure, I offered, I said, "Suppose I call up," and I looked in the telephone book, and of course saw "Berry V. Stoll" under the Harrods Creek, I am pretty sure I looked under the Harrods Creek listing. I said, "Let me call and make sure how to get out there." And he said, "Oh, no, no, don't do that."

Q. Now did you offer to call anyone else?

A. Then I said, "I'll tell you what I do. I know Mr. Bader out at Harrods Creek too, he runs a grocery store out there, I know him very well. Suppose I call him." He said that would be all right. So I called Mr. Bader
472 and the line was busy on one or two occasions. I think I had to make two or three attempts to get Mr. Bader, but I finally got Mr. Bader and he told me just exactly where Lime Kiln Lane was. Of course, later on it come to me.

Q. Did you give this man directions how to get to Lime Kiln Lane?

A. Yes. I told him, "Now there are two ways you can go there. You can go the River Road or you can go the Brownsboro Road." He said, "No, I don't want to go the River Road." Of course, I didn't ask him why, but he said he didn't want to go the River Road.

Q. Did you give him the directions?

A. So I told him that the Brownsboro Road is a little bit easier for me to direct him, a little bit easier for a stranger to find, but that's the way he wanted to go, so, of course, that's the way I directed him.

Q. How long was he in your place of business altogether, Mr. Kottke?

A. Oh, I should judge between ten and fifteen minutes.

Q. Did you have occasion to observe that man closely?

A. Yes, pretty closely, because he didn't seem to be in no hurry, just stood there and was willing to talk.

Q. A short time later on that afternoon or night,
473 did you have occasion to hear of the report of the

kidnapping of Mrs. Alice Stoll?

A. Yes, I heard it over the radio. We had a radio at the office.

Q. Then sometime thereafter, did you have occasion to see a picture of certain suspects in the kidnapping?

A. Not for several days after.

Q. That's what I say.

A. No, not for several days.

Q. Several days thereafter, did you happen to see the picture of suspects?

A. Yes, but before that—

Q. You had reported this, had you not?

A. The newspaper men were there and I gave them a very good description of the man and they drew a picture of it.

Q. From the description you furnished?

A. From the description I gave them.

Q. Can you now identify the man that came to your garage at 2:00 P. M. on October 10th, 1934?

A. I am sure I can.

Q. Would you look around here in the court room and see if that man is here?

A. That's the man right there. Of course, he didn't wear glasses then.

474 Q. Sitting next to—

A. Sitting between the two gentlemen right there at that table.

Q. And he was in your place of business approximately fifteen minutes?

A. Yes.

Q. Now, after you had given him the directions to get to Lime Kiln Lane by Brownsboro Road, how did he leave your place of business?

A. He went out the front door, but that's as much as I could say because just at that time one of my mechanics brought a customer in and he had a complaint, and he was rather boisterous about it, nad while I was trying to quiet him this gentleman walked out, and I didn't see which direction he went.

Q. You don't know how he left your place of business.

A. I don't know how he left; no, sir.

Q. Mr. Kottke, do you know where, in 1934, Mr. C. C. Stoll and Mr. George Stoll lived?

A. Yes.

Q. How close was your garage to the C. C. Stoll and the George Stoll residence?

A. Just about six or seven blocks, it all depends on how you want to go. You can go by the way of Cher-
475 okee Road or you can go by way of Longest Avenue. Of course, going by Longest Avenue, that's closer to it.

Q. Would it be a fair description to say both your place of business and the George Stoll residence and the C. C. Stoll residence are in the Highlands?

A. Yes.

Mr. Brown: I think you may ask the witness.

Cross-examination by Mr. Hogan.

Q. Did I understand you to say a moment ago, Mr. Kottke, that you did not yourself know where Lime Kiln Road was?

A. I was somewhat confused just for a moment.

Q. And you were required to call Mr. Bader at Harrods Creek to find out where that was?

A. No. I knew then where it was, but to make absolutely sure I called Mr. Bader.

Q. But when this man came into your place and asked you for directions to Lime Kiln Road, you then were hazy as to its location?

A. Just for a moment, yes, as you would be, someone ask you a question and just for a moment maybe you have got other things on your mind, you just can't think for a moment.

476 Q. That doubt as to its location really existed in your mind for more than just a moment, did it not?

A. No. Well, all right, say more than a moment.

Q. About how long?

A. Now, I didn't have no watch and time myself.

Q. No, just give me some idea?

A. Just like I say, just a second or two, until your

thoughts begin to gather.

Q. Would you have been able without having called Mr. Bader to have taken this man to Lime Kiln Road without asking anybody how to get there?

A. Yes, because before I called Mr. Bader it was thoroughly fixed in my mind where Lime Kiln Road is. Of course, I have been out there many a time.

Q. This man you say was a well dressed young man?

A. Yes. He had on a dark suit, I am almost sure it was dark blue.

Q. Didn't you say a moment ago on direct examination you didn't know where Lime Kiln Road was?

A. At the moment I didn't know, but I had been there many times. As I say, I was just a little bit confused just for a moment.

Q. I believe you likewise stated you volunteered to take this man to the party he wanted to see on Lime Kiln Lane?

A. No, I made no statement of that sort. I of-
477 fered to call up and get the direction. I didn't volunteer to take him because I had a business to take care of.

Q. I believe your statement was that you offered to direct him.

A. Yes, and I did direct him.

Q. How were you going to be able to direct him if you at the moment didn't know where Lime Kiln Road was?

A. Well, I was courteous enough to go—to avail myself of the information to try to find out.

Q. Did you know anybody who resided on Lime Kiln Road?

A. No.

Q. How were you going to direct him to somebody on Lime Kiln Road if you didn't know anybody who resided on that road?

A. Well, you don't have to know a person's name that lives on the road to direct them to a certain place. If a man wants to go some place on Broadway, I certainly don't have to know who lives on Broadway in order to tell him how to get to Broadway or how to ge to the Tenth Street

Station.

Q. All right, sir, but if a person inquires about going to see a person on Broadway, you would have to know whether he lived at Forty-fifth and Broadway or 150 East Broadway before you could start him out on that direction, wouldn't you?

478 A. That's hardly a fair comparison because Lime Kiln Lane, after all, is only about, Oh, at the most, two miles long.

Q. And yet you were going to offer to direct this man or some man to some place on a road two miles long, and yet you did not know anybody who lived on that road.

A. I still think that's a very foolish question.

Q. Well, foolish or unfoolish, was that your situation?

A. Because I can draw you a diagram where the road is.

Q. Was that your situation? Is that what you were trying to do out of courtesy?

A. I did direct him and he got there, so I evidently knew what I was doing.

Q. You knew what you were doing after you called the store man, Mr. Bader, at Harrods Creek.

A. I knew before that, but I wanted to verify it. I wanted to be absolutely sure. I certainly didn't want to send a stranger eight or nine miles out in the country without being sure that is the place.

Q. Well, now, was he a stranger. You said that he didn't want to go by way of River Road.

A. He made the remark that he had been there some months ago.

479 Q. Been where?

A. In Louisville, and he had been out on the Lime Kiln Lane.

Q. Did he tell you that?

A. He told me that; yes, sir.

Q. Are you sure he told you that?

A. I am positive.

Q. There is no question in your mind about that?

A. None whatever.

Q. And you are sure that he told you he didn't want

to go to Lime Kiln Road by way of the River Road.

A. I am sure of that; yes, sir. I wanted to send him that way because that would be the easiest way to direct the man to Lime Kiln Lane from my place of business.

Q. Did he give you any reason why he didn't want to go by way of the River Road

A. No. Of course, as I say, I wouldn't pry into a man's affairs.

Mr. Hogan: That's all, Mr. Kottke.

Mr. Brown: That's all.

Mr. Brown: Call Mrs. Alice Stoll.

The Court: Mrs. Stoll, you were sworn yesterday?

Mrs. Stoll: No, I was not.

(Mrs. Stoll was thereupon duly sworn by the Clerk.)

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480 MRS. ALICE SPEED STOLL called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. Mrs. Alice Speed Stoll.

Q. You still live on Lime Kiln Road, Mrs. Stoll?

A. I do.

Q. During the month of October, 1934, did you live on Lime Kiln Road?

A. I did.

Q. What is the name of your husband?

A. Berry V. Stoll.

Q. I will direct your attention to the events that happened on October 10th, 1934. I will ask you if you were at your home that day.

A. I was.

Q. Was there any unusual reason that day why you were at home?

A. Yes. I was ill with a bad cold and I was resting at home.

Q. Approximately sometime in the afternoon, did some

person come to your home?

A. Yes. A man came saying he had come to
481 repair the telephone.

Q. About what time of the afternoon, as best you can judge. I don't expect you to be absolutely accurate.

A. About 3:00 o'clock in the afternoon.

Q. At that time, how many people were in your home?

A. Myself and the maid, Anne Woolet.

Q. Is that W-o-o-l-e-t? Is that the way to spell it?

A. W-o-o-l-e-t, I think.

Q. At what part of your home were you in when this man came to your house?

A. I was resting in my bed room.

Q. Did you have occasion to overhear any conversation between this man and your maid, Mrs. Woolet?

A. Yes. I heard him say to her in the hall downstairs that he had come to repair the telephone.

Q. Prior to that time had you had any trouble with your telephone?

A. Yes. We had had trouble with our telephone for over a month and the telephone man had been working on the line, several telephone men had in fact.

Q. Had that same morning a telephone man been to your home?

A. Yes, he had.

Q. When this man got admittance to your house,
482 Mrs. Stoll, can you tell what next happened? At that time were you in your bed room?

A. I was.

Q. Now what happened with reference to this man or your maid coming upstairs to talk to you?

A. The maid came up to my bed room where I was resting and asked if the telephone man might work on the extension line that was in my room.

Q. What did you do then, Mrs. Stoll?

A. I moved to the guest room and closed the door and told her that he might.

Q. How were you dressed on that occasion?

A. I was fully dressed except that I had on a kimono

instead of my dress.

Q. Are you able to identify the man that came to your home on October 10th, 1934?

A. Yes, I am.

Q. Would you point out to the jury that man that came to your house?

A. Sitting right there.

Q. Now, Mrs. Stoll, after you had moved to th. bed room or to the guest room, how long did you remain in the guest room before anyone, either Mrs. Woolet or this defendant, came in your room?

A. Say a half hour or more.

Mr. Hogan: Would you mind reading that ques-
483 tion and answer?

(Question and answer read by the reporter, as follows:)

"Q. Now, Mrs. Stoll, after you had moved to the bed room or to the guest room, how long did you remain in the guest room before anyone, either Mrs. Woolet or this defendant, came in your room?

A. Say a half hour or more."

Q. I meant the guest room.

A. Well, I couldn't say exactly; perhaps between fifteen minutes and a half hour. I couldn't say exactly.

Q. What happened then, Mrs. Stoll?

A. The door opened and the maid came into the room ahead of the kidnapper, he holding a gun at her back.

Q. And what was your first word at that time, Mrs. Stoll?

A. "What are you doing in here?"

Q. And to which question did he reply anything?

A. He said that he had come to kidnap me.

Q. What did you do then? Did you attempt to reason with him about that?

A. I did. I thought of every argument that I could think of to try to talk him out of it. I told him we were
not wealthy. I told him my father had had recent
484 bank losses. I talked and argued in every way I could think of to dissuade him from taking me.

Q. You were not able to dissuade him?

A. No, I was not.

Q. And with reference to what happened then, at any time were your hands bound or attempted to be bound?

Mr. Hogan: If Your Honor please, Mr. Brown is leading the witness.

Mr. Brown: I suggest that is leading. I can rephrase it. I was trying to hurry along, maybe.

Q. What happened next, Mrs. Stoll, when you were unable to dissuade him?

A. My arguments were of no use. He laid his gun on the bed for a second. He intended to tie my hands at that point, and while the gun was on the bed for that second I attempted to grab it.

Q. What happened when you attempted to grab his gun?

A. He hit me on the head with an iron pipe that he had brought.

Q. I'll show you this pipe wrapped in paper, and ask you if it was that pipe or a similar pipe with which you were struck by this defendant.

A. It was.

Q. At what portion of your head were you struck?

485 A. On my right forehead.

Q. What happened then, Mrs. Stoll?

A. I continued to try to resist and I asked the maid in a low tone of voice if she would try to get my gun, our own gun, which we kept in our bed room.

Q. Did at that time your husband have a gun there at your house?

A. Yes.

Q. Where was that gun kept at that time?

A. In our bed room.

Q. After you had asked the maid to attempt to get that gun and you continued to resist, what then happened?

A. She did not make a move to get it, so I attempted myself to get into my bedroom to get the gun, at which point he hit me over the head again, so hard that time, that I fell over on the bed, the blood rushing from my head.

Q. What portion of your head did he strike at that time—whereabouts?

A. Right over my right ear, on the side of my head.

Q. After receiving that blow, what was your condition?

A. I was in a dazed condition, the blood flowing heavily from my head, hardly conscious.

486 Q. Now then what happened next, Mrs. Stoll?

A. He ordered the maid to bind my wrists while he held the gun in front of us both.

Q. With what were your wrists bound?

A. With wire.

Q. After your wrists were bound, did you have any conversation of any kind with this defendant relative to the arrival of your husband?

A. I did not mention the arrival of my husband, but he said "When will Berry be home?"

Q. Did he use the phrase "When will Berry be home?"

A. Yes.

Q. What answer did you make to that?

A. I did not answer him. I was so nervous at that point I was not going to tell him when Berry would be home.

Q. Did he make any statements with reference to the arrival of your husband, Berry?

A. He did. He said, "If he arrives home now I will kill him."

Q. Now after your wrists were bound, and after the statements you have just testified to were made, with reference to Mrs. Woolet, what happened to her? What was going on at that time with reference to her, if you

487 have any recollection about that?

A. He bound her also.

Q. Now up to that point, were you dressed in the same way that you have heretofore testified about?

A. I was.

Q. Were you ordered anywhere?

A. I was ordered to walk out the front door and into his car.

Q. Were you allowed to procure any other wearing apparel at that time?

A. I was allowed to get my coat after I asked him if

I might get it.

Q. And you were then taken to the car?

A. Yes, sir.

Mr. Hogan: Now that is objected to. He is leading the witness.

The Court: Of course, it is leading; the question may be reframed.

Q. After your coat had been obtained, Mrs. Stoll, where next were you ordered or did you go?

A. I was ordered to proceed to his car. He walked behind me with the gun.

Q. That was from your home on Lime Kiln Road in Jefferson County, Kentucky?

A. Yes, sir.

488 Q. Up to that time, other than your wrists being bound, had anything else happened to you?

A. Yes. Before I left the guest room he put adhesive tape over my mouth so it would be impossible for me to open it.

Q. After you got out to the car, were you able to describe the car or what type of car it was?

A. It was a Ford.

Q. What color, if you recall?

A. Black or dark blue.

Q. Any other distinguishing features about it that you recall at this time?

A. I made an attempt to remember the license number.

Q. Did you remember the license number?

A. Yes.

Q. Have you forgotten it by this time?

A. Yes, sir.

Mr. Hogan: That is leading.

The Court: It is leading—

Mr. Brown (Interrupting): It is leading but since she has forgotten it, it will not hurt you.

The Court: I don't think that is prejudicial at all.

Q. All right. After you got to the car what 489 happened then?

A. I was ordered to lie down on the floor of the car in front of the back seat. My feet at that point were

bound and I was covered all over with blankets and newspapers—entirely.

Q. Did the car start at that point?

A. It did.

Q. Can you tell the jury in what direction it went after leaving your residence?

A. Yes. I was trying to keep my mind on all points thinking he may be caught; and I made a mental note. The car turned left.

Q. Beyond that, are you able to tell in which direction the car turned?

A. No.

Q. Now I will show you this map which I don't think perhaps you have seen before. This map is Government Exhibit No. 1—

Mr. Hogan (Interrupting): Now, if Your Honor please, I do not recall yesterday that the government introduced that map in evidence.

Mr. Brown: I thought it was not only introduced in evidence, but designated as Government Exhibit No. 1.

Mr. Hogan: It might have been designated as Government Exhibit No. 1 but I do not recall that it was
490 introduced.

Mr. Inman: Mr. Wehmoff identified that map and it was introduced as Government Exhibit No. 1 with his testimony.

The Court: I know that it was identified as Government Exhibit No. 1. Was it at that time introduced?

Mr. Inman: Yes, Your Honor. I asked him if he would introduce it with his testimony as Government Exhibit No. 1, and he said "I will."

The Court: Well can't you look back and see if there is going to be any question about it?

Mr. Hogan: Well the point is if they are going to use it I want it introduced.

The Court: Well can't it be by agreement introduced now if it wasn't introduced before?

Mr. Hogan: Yes, that is all right. The point is I did not want it referred to as being in evidence if it was not really in evidence.

The Court: All right.

Q. Now this is your residence right here, and this is the driveway to Lime Kiln Road, this road here being Lime Kiln Road. Now, after you left your entrance here, was it at that point that the left turn was made?

A. Yes.

491 Q. And leading left, it would follow Lime Kiln Road along that way? Is that the way Lime Kiln Road runs?

A. Yes.

Q. What road does it eventually reach out here?

A. The Brownsboro Road.

Q. Now after that car had turned left and started out, Mrs. Stoll, how long was it driven before there was any stop of any kind, if you can recall?

A. I cannot recall exactly—perhaps a half an hour or so.

Q. Was a stop made at some point then?

A. Yes.

Q. Was there any conversation or, if there was, could you overhear any conversation?

A. Yes, the car stopped and backed up, and he said "Okay", to someone, and then he started singing and went on.

Q. Now how far did you drive before there was another stop? I don't expect you to tell the distance, but estimate the time, if you can, from the time you left your home on Lime Kiln Lane until you finally came to a rest?

A. Two hours or more.

Q. When this stop at the end of that two hours ride was reached, could you tell the jury where you were,

492 or where you discovered yourself to be at that time?

A. He said, "We are now in Indianapolis."

Q. Now at what part of Indianapolis did you find yourself to be in? Where in Indianapolis?

A. We stopped at a dark garage.

Q. And did he make any statement to you? Did he stay in the car or leave the car?

A. He locked me in the car and said that he was going to see if the coast was clear and that if I made any attempt

to scream or attract attention he would bump me off.

Q. Did he use those words?

A. Yes.

Q. How long was he gone at that time?

A. 5 minutes or so.

Q. And what happened? You remained, of course, bound and gagged and locked in the car?

A. Yes.

Q. What happened then?

A. He returned and said the coast was not clear and that he would drive out into the suburbs.

Q. Up to this point where were you? In what portion of the car?

A. On the floor; the same place I had been since I left home.

Q. How many seats in the car?

493 A. Front seat and back seat.

Q. With reference to the front seat and the back seat, where were you located?

A. On the floor in the front of the back seat.

Q. Now then, directing your attention back to when you say he returned and said the coast was not clear and that he would drive out in the suburbs, what happened then?

A. When we got to a deserted part of the town he stopped the car and unbound my feet so I could sit up and ordered me to sit on the front seat.

Q. With reference to the condition of your mouth up to that point, what was the condition of your mouth?

A. The adhesive tape had not been taken off up to that time.

Q. Now then what happened to the adhesive tape out there?

A. He took it off.

Q. Now, with reference to your hands, what was the condition of your hands and wrists at that time?

A. They were still bound.

Q. With reference to the condition of your head, what was the condition of your head?

A. It was still bleeding.

Q. Up to that time had it received any attention
494 of any kind?

A. No.

Q. Now after you received your order to sit in the front seat of the car, what then happened?

A. I asked him if he would unbind my wrists. I was suffering a great deal from the pain.

Q. Did he at that time unbind your wrists?

A. Yes.

Q. Did he, or did he not, make any statements to you at that time with reference to attempting to escape?

A. Well, he said if I made any attempt to attract attention he would bump me off.

Q. He again used that phrase, "'bump you off"'?

A. Yes.

Q. Now, then, Mrs. Stoll, at that time or shortly thereafter did you have any conversation with this defendant?

A. Yes. As soon as my mouth was unbound I asked him why he had kidnapped me.

Q. And what did he tell you?

A. He said for the money.

Q. Now then after you had ridden out there to this deserted part of Indianapolis, and after you were unbound, as you have described, and after this statement he made that you have testified to, where next did you go in
495 the car?

A. We drove out to the apartment.

Q. And where did you go then?

A. We drove back to the garage where we had been before.

Q. What happened at that point?

A. He asked me if I would walk in or would he have to carry me and I said that I would walk in.

Q. All right. Now how did you get into the place that you subsequently went?

A. We came in through the back door.

Q. What was the condition of the alley, or the place where the garage was, with reference to being dark or

light?

A. It was terribly dark.

Q. What portion of the apartment did you enter into?

A. The kitchen.

Q. What was the condition of the kitchen when you got in there?

A. It was in great disorder, with dirty dishes.

Q. Had you had any food up to that time?

A. No.

Q. With reference to any food that you might have had, tell the jury if you had any conversation with the defendant about food?

496 A. Yes, he said that he wanted to have some supper.

Q. Were you able to fix any?

A. I scrambled some eggs.

Q. Were you able to eat anything?

A. A little bit.

Q. Then what was your condition?

A. I was feeling pretty sick and had to lie down.

Q. Where did you lie down?

A. On the bed.

Q. In the bed room of this place?

A. I think so.

Q. How many beds were in that room?

A. Twin beds.

Q. Now with reference to how you were secured in that bed, will you tell the jury how you were secured in that bed?

Mr. Hogan: Now wait a minute—that is entirely leading. She has not said that she was secured in the bed.

Mr. Brown: Well I will rephrase the question. I agree with you that it was leading.

Q. How did you spend that night?

A. With my hands bound.

Q. How were they bound?

497 A. To the springs of the bed on each side.

Q. Were you able to shift your position at all?

A. No, I could not move.

Q. Now was this in one of the twin beds?

A. Yes.

Q. Where did the defendant Robinson spend the night?

A. In the other twin bed. I asked him if I might spend the night on the couch in the living room, and he said no.

Q. In addition to your hands being tied to the springs, were you attached in any other way to the defendant?

A. One of my wrists had a cord tied around it, which was attached over to his so in case I made a move he would know it.

Q. Will you answer the question again?

A. I say, a cord was attached to my wrist which also reached over to his, so when I made a move he would know it.

Q. How long did you remain tied to the bed in that manner? All that night?

A. Yes.

Q. Now then up to that time what was your physical condition?

A. I was in a very weakened condition. My head
498 was going around so I could not rest from the first blow on my head, and from the second blow on my head I was still bleeding, and I was feeling very weak and very ill.

Q. Up to that time was your head given any attention and, if so, what was done.

A. Yes. The first night I asked him if he would put some mercurochrome on it and he did.

Q. Was any other attention given to it other than that requested mercurochrome?

A. No.

Mr. Brown: Your Honor, I am going to leave this phase of the case. If you wouldn't mind adjourning for lunch I will get out some exhibits I want to use now.

The Court: All right. Members of the jury, we will adjourn at this time and reconvene at quarter to two. During this recess do not discuss the matter among yourselves or with anyone or permit anyone to talk about it in your presence.

At this point the noon recess was taken, after which the following proceedings were had:

Direct Examination by Mr. Brown continued.

Q. Now, Mrs. Stoll, after your arrival in Indianapolis at that place and after the first night, did
499 this defendant during the next several days have occasion at any time to leave the apartment?

A. Yes, he did every day.

Q. When he left the apartment what was done with you?

A. I was locked in a small closet off of the living room. I was first tied in a chair that was placed in there, and the closet door was closed when he left the apartment, and I was locked there with my mouth gagged and an adhesive tape over my lips.

Q. And with reference to the position of that closet in that apartment, can you orient the jury somewhat and tell them—we have had the apartment layout explained to us, consisting of the kitchen, bed room, and the living room. Now where did this closet open from? Which one of those rooms?

A. From the living room.

Q. Now with reference to the location of the bath room opening out of the living room, facing the bath room, where was that closet?

A. To the left of the bath room.

Q. Was it a large closet or a small closet?

A. No; a very small closet.

Q. Now I will show you government exhibits 15 and 16, government Exhibit 15 being with the chair side-
500 ways in the closet, and government Exhibit No. 16 showing the chair facing the front of the closet, and ask you to examine those two pictures and tell the jury, after you were tied, bound and gagged and placed in the closet, which way the chair faced?

Mr. Hogan: I object to that because the drawing shows more than one closet.

The Court: The picture shows more than one closet?

Mr. Hogan: No; the drawing shows more than one closet.

The Court: She is looking at the pictures now.

Mr. Hogan: She has never stated which of the closets she was put in.

The Court: She said that she was put in the one next to the bath room. She said she was in the one to the left of the bath room. Is there more than one to the left of the bath room?

Mr. Hogan: No.

Mr. Brown: That is what she said.

Q. Was it the closet immediately to the left of the bath room?

A. Yes.

The Court: I think she said it was off of the living room.

501 Q. You were tied to the chair, bound and gagged and placed in a closet in a chair that faced this position (indicating)?

A. Yes.

The Court: Which position was that?

Mr. Brown: I thought I showed that picture to the jury.

Q. That is facing the door, isn't it?

A. Yes.

Mr. Hogan: Which exhibit is that?

Mr. Brown: No. 16.

Q. Now, Mrs. Stoll, in that closet were there any windows or any other opening with the exception of the door?

A. No.

Q. Now on how many different occasions—either by days or any other way you want to put it, would you be tied in the position you have indicated and left in that closet?

A. Usually several times a day.

Q. What was the occasion of your being tied and left in the closet in that way?

A. Whenever he left the apartment or whenever he went from the room where I was—I was never left in the room by myself.

502 Q. Now, Mrs. Stoll, with reference to any conversation that you may have had with this defendant,

if you did have any conversation with him, would you relate the topics that were talked about as specifically as you can?

A. I saw the Indianapolis newspapers. We discussed the kidnapping, what he saw in the newspapers, what he would tell me from conversations that he had had with his family—that is about all.

Q. With reference to that—the conversations that he had and that he related to you that he had. Was there any discussion concerning the payment of any money?

A. Yes. He would become very angry when he said that his family's house was being watched by the police.

Q. Now did you at any time suggest that he communicate with anyone by telephone?

A. I did. I repeatedly requested that he call my family on the telephone.

Q. What did he say with reference to that?

A. He refused to do so because he said that the phones were being watched.

Q. Did you suggest anyone that he communicate with?

A. I finally suggested a very close friend of mine, Miss McHenry.

Q. Miss McHenry is now Mrs. Douglas Potter?

503 A. Yes.

Q. Did you discuss with him any means of identification?

A. Yes, I had on at that time a pair of brown alligator shoes, and this friend of mine had a pair exactly like that, and I knew that would identify me. Also, I had a sapphire ring on that she knew very well was mine.

Q. Did you suggest that this defendant communicate with Miss McHenry?

A. I did.

Q. With reference to Miss McHenry's residence or phone number, did you tell the defendant anything about that?

A. Yes; I gave him her telephone number.

Q. Now some time after this conversation, did you have any further conversation with this defendant about whether he had communicated with Miss McHenry or not?

A. Yes; he came back and said he had.

Testimony of Mrs. Alice Speed Stoll

Q. Now, Mrs. Stoll, will you tell the jury how this letter happened to be written, and whether it is in your handwriting or not?

A. It is.

Q. How did that letter happen to be written?

A. He dictated the letter to me and told me to write it to confirm the telephone call that he had made to my friend.

504 Q. Did you then deliver this letter in this envelope to this defendant?

A. Yes.

Q. I will show you this letter with the envelope, and ask you if that is the letter that you wrote in response to this defendant's dictation?

A. It is.

Mr. Brown: I would like to read this letter to the jury.

"Sunday, October 14th.

"Dear Seat—

Q. Tell the jury about the salutation in the letter?

A. Well this friend of mine and I had called each other by that name. We had grown up together in school, and it was a sort of a nickname we had for each other, and I knew if I addressed it that way she would know it was from me.

Mr. Brown (Continuing):

"Dear Seat—

"The phone call was okay. I asked the kidnapper to get someone to call you. He said he drove to Indianapolis to do so. He and I believe that Berry delivered the money to Mr. T. H. Robinson in good
505 faith. However, the kidnapper knows that the police are watching the intermediary. The kidnapper now wants the intermediary to deliver the money to Mrs. Frances Robinson, his daughter-in-law. She will or already has received instructions.

"This is the only person from whom and the only way by which the kidnapper will agree to accept the money. This is final.

"Do not attempt to call the person who called you, or trace it in any way. The person who called is a friend of the kidnapper and will receive the money. Therefore, instruct all the family to be sure the daughter-in-law is not followed or interfered with in any way.

"If these instructions are followed, I will be released unharmed within 24 hours. Otherwise, I am sure they will carry out their threat.

"Get my family to use all their influence to withdraw the law from the case until I return. This is imperative."

Mr. Brown: I would like to introduce this letter in evidence as Government Exhibit No. 30.

The Court: All right.

506 Mr. Brown: That is the letter, the envelope, and the stamps.

(The letter above quoted was handed to the Reporter, marked Government Exhibit No. 30, and filed with the record.)

Q. The envelope is postmarked "Indianapolis, Indiana, October 14, 4:00 P. M., Special Delivery. Miss Elizabeth McHenry, 1414 South Third Street, Louisville, Kentucky."

A. Yes that is right.

Q. Now, Mrs. Stoll, during the time you were held in that apartment, did you at any time ascertain the true identity of the kidnapper?

A. Yes. On the second day afterwards he had a telephone conversation with his father and he came back and told me that it was known who he was; that my family then knew, and so he told me his name at that time.

Q. Up to the time on October 10, 1934, up until approximately the hour of 3:30 P. M., in the afternoon, had at any time you seen this man by the name of Robinson or any other name at any time before?

A. No; I had not.

Q. Now during your stay in that apartment did this defendant Robinson molest or attempt to molest you in

any way?

A. No; he did not.

Q. Did you have any conversation with him on
507 that subject?

A. I said if he made any attempt to that my husband would never stop until he had tracked him down and killed him.

Q. Now, Mrs. Stoll, I will show you a letter and ask you if you wrote that letter?

A. Yes; I did.

Q. Will you tell the jury under what circumstances this letter was written, dated Saturday October 13th addressed "Dear Mr. Intermediary"?

A. He had told me after a conversation with his father that his wife would bring the money to the apartment, the ransom money, and when it did not arrive the next day, he had me write this letter.

Q. Did this letter enclose anything?

A. Yes, it enclosed my wedding ring to show that I was still alive.

Q. What was this defendant's state of mind, as manifested by his actions, when the ransom money did not arrive?

A. He was very angry.

Q. All right.

Mr. Brown: I would like to read this letter to the jury.

The Court: All right.

508 "Saturday, October 13th.

"Dear Mr. Intermediary:

"This is Alice Stoll writing. We are sending my wedding ring on which is engraved my name if you look inside closely. I am well and being treated nicely. I have only a slight cut on my head.

"If you have not already done so, please pay over the money to the one who this man tells you to.

"Alice Stoll.

"P. S. The man I am referring to is the man who is sending this letter to you with instructions.

Of course you may have already paid it, in which event ignore this letter."

Mr. Brown: I would like to introduce that letter as Government Exhibit No. 31.

(At this point the above quoted letter is handed to the Reporter, marked Government Exhibit No. 31, and filed with the record.)

Q. Now, Mrs. Stoll, up to the time you finally left that apartment, had you ever in the daytime seen the outside of the place where you were being held?

A. No; I had not.

Q. With reference to the apartment itself, with reference to the shades or any coverings on the windows, tell the jury during your stay there what the condi-

509 tion of that apartment was?

A. The blinds were drawn.

Q. Were you at any time ever able to see outside of the apartment?

A. No.

Q. Now I will show you another letter addressed "Dear Berry," and ask you to examine the envelope and the letter itself and tell us whether or not you wrote that letter.

A. Yes; I did.

Q. Will you tell us under what condition this letter was written?

A. To try to get him to call off the police.

Q. I notice it is addressed to Mr. Berry Stoll, in care of Mr. W. S. Speed, 2828 Lexington Road, Louisville, Kentucky. How was this letter written? That is, with reference to its dictation, or is it your own method?

A. All of the letters that I wrote were dictated to me. They were never in my own words.

Q. And that is true of this letter also?

A. Yes.

The Court: It is true of the letter dated October 13th to Dear Mr. Intermediary?

Witness: That is true of all of the letters I wrote.

510 Mr. Brown (Reading):

"Dear Berry,

"I only had a small cut on my head and it has healed and I am otherwise all right and being treated nicely. The kidnapper found out last night that the intermediary, Mr. T. H. Robinson, and his daughter-in-law were being watched and that he couldn't give the money to his daughter-in-law because of the police. Both the kidnapper and I believe that you meant to deliver the money in good faith but that you are being double-crossed by the police. My life depends on this daughter-in-law not being shadowed so she can deliver the money. The kidnapper will not accept any other person other than this daughter-in-law to deliver the money. Therefore you must for my sake see that this girl is not interfered with or followed to her destination.

"I sent a letter with my wedding ring to Mr. T. H. Robinson.

"Because the law is double-crossing us the kidnappers refuse to release me until twenty-four hours after they receive the money from this girl.

511 "I know this is my last chance to be returned alive. If the money is delivered all right I will be released unharmed.

"Much love,

"Alice."

The Court: Now what is the date of that letter, Mr. Brown?

Mr. Brown: October 14th. Now I would like to introduce that letter, together with the stamps and the envelope as Government Exhibit No. 32.

(The above quoted letter is handed to the Reporter, marked Government Exhibit No. 32, and filed with the record.)

The Court: Mrs. Stoll, after you wrote and signed the letters, what did you do with them?

Witness: They were taken by the kidnapper to mail.

Q. Now Mrs. Stoll, did you at any time ever have any

conversation with Robinson concerning the presence or absence of any confederates of his?

A. Yes, he led me to believe that he had two confederates.

Q. Now I will address your attention particularly to the morning of October 16, 1934. Did anyone that morning come to the door of the apartment?

A. Yes; they did.

Q. At approximately what time, if you have any
512 way of judging the time?

A. About 9 o'clock.

Q. When did you first learn that someone was at the door of the apartment?

A. I heard a knock on the door.

Q. Where were you at that time?

A. I was tied in bed.

Q. When you heard this knock, what did you do?

A. I called the kidnapper's attention to it.

Q. And what did he do?

A. He answered the door.

Q. And who entered the door at that time?

A. His wife.

Q. Do you know her name now?

A. Mrs. Robinson then.

Q. What was her first name?

A. Frances Robinson.

Q. When she came into the apartment did she have anything with her?

A. Yes; she had a bundle with the ransom money in it.

Q. What did she do with that money?

A. She threw it on the bed.

Q. Now what conversation, if any, took place between Frances Robinson and the defendant during that time?

513 A. She told him to hurry and get away as the police were following her.

Q. Did he make any response to that, that you can recall?

A. I cannot remember his answer.

Q. Now what next ensued with reference to this

defendant's leaving the apartment?

A. He proceeded to talk to his wife in the other room for some time and dress. He did not leave before 11 o'clock.

Q. Can you tell the substance of the conversation that Robinson was having with his then wife in the other room?

A. No, I could not.

Q. With reference to the fact that he go alone or that she go with him?

Mr. Hogan: I object to that.

The Court: It is leading. Objection sustained.

Q. Was there any conversation with reference to Robinson's wife accompanying him?

Mr. Hogan: That is still leading and I object to it.

The Court: I think he can direct the witness' attention to the point that he wishes her to testify about without indicating the answer that she may make.

514 Mr. Hogan: But she has already said that she could not hear the conversation between Robinson and his wife.

The Court: Well, I think the question was did she hear any of it at all.

Q. At any time while Robinson and his wife were in the apartment did you hear any conversation between Robinson and his wife?

A. I heard him urging her to go away with him.

Q. Did you hear her response?

A. I heard her say that she did not want to go.

Q. Now when he finally prepared himself to leave the apartment, what did he do with you?

A. He locked me in the closet.

Q. And what else did he do?

A. He tied me in the chair as he always did when he left.

Q. Did he make any statements to you at that time with reference to your leaving the apartment?

A. Yes; he threatened to kill me if I made any attempt to leave before 24 hours.

Q. Was Mrs. Robinson still in the apartment?

A. Yes; she was.

Q. What happened after he left and you remained in the chair bound?

A. I remained in the chair bound for approximately a half hour, and then he returned again.

515 Q. And at the time of his return were you still locked in the closet and bound in the chair?

A. Yes; I was.

Q. And how long did he remain on the second occasion in the apartment that morning?

A. Not long. He again tried to persuade his wife to go off with him.

Q. Did she go?

A. No.

Q. Then what did Robinson do?

A. He left again.

Q. How long after his second trip did you remain bound in the chair?

A. Not so very long; his wife untied me then.

Q. What happened next, Mrs. Stoll?

A. She went out and got something to eat.

Q. Did she also at any time during that morning get you anything to drink?

A. Yes she did; she got a bottle of beer.

Q. Did she then return to the apartment?

A. Yes.

Q. Well now at the time she went out for the sandwiches—did she leave the apartment once or twice, is what I am trying to get at?

A. One time, I think.

Q. Now how long then after Robinson left the
516 apartment and Mrs. Robinson untied you, did you and Mrs. Robinson remain in the apartment? Your best judgment?

A. I think we left the apartment around two o'clock.

Q. Now, what time did Robinson, on the second occasion leave the apartment? Your best judgment?

A. About a half hour after he had gone the first time.

Q. Well do you remember what time he first left the apartment?

A. About 11 o'clock.

Q. Now then how did you and Mrs. Robinson determine where you were going?

A. I had read in the paper that the Rev. Clegg who lives in Indianapolis, and who was a cousin of my husband, I read that he lived there, and I asked Mrs. Robinson to take me there.

Q. Up to that time had you ever met the Rev. Clegg and Mrs. Clegg?

A. No, I had not.

Q. What was your condition—

The Court (Interrupting): Now we are not going to have people coming in here and getting up and going out while the witness is testifying. No one is going to be permitted to leave the court room or come in while this
517 witness is testifying. If you want to go out before that, leave now, or be prepared to stay here while this witness is testifying. Let's not interrupt the testimony while this witness is on the sand.

Q. What was your condition, Mrs. Stoll, at the time you left that apartment?

Mr. Hogan: Wait just a minute now. If Your Honor please, that is highly objectionable in view of the fact that the condition of this indictment—I would like to be heard on that, if Your Honor please.

The Court: All right, I will be glad to hear you. You may step up here to the bench.

(Conference between the Court and counsel:)

The Court: Will the Reporter read the question?

(The last question written above was read.)

The Court: Do you mean physical condition?

Mr. Brown: Yes, Your Honor.

The Court: Do I understand that there is an objection to that?

Mr. Hogan: There is an objection to the answer to that question, and my objection is based upon this point: The indictment in this case is an indictment drawn in the language of the statute, or statutes, to-wit: Sections 408 and 408b, Title 18, of the United States Code Annotated.

The concluding sentence or phraseology of page 3

518 of this indictment, just before the phrase, "Against the peace and dignity of the United States, and contrary to the form of the statutes in such case made and provided," is the term "and did not liberate her unharmed."

Now, it is the contention of the defendant that that term, "and did not liberate her unharmed," in the language of the statute itself is not sufficient in the eyes of the law with which to notify this defendant what issues upon that subject he is called upon to meet in the proof of this case.

An indictment is always most strictly construed against the drawer of the indictment. That is a general proposition of law and I submit it does not need any elaboration upon. That is a term which we are all familiar with, and if there need be any question about that, I am prepared to furnish the Court with ample authorities on that.

There is another generally known proposition of law that there cannot be introduced evidence when there is not pleadings to support it. Evidence without pleadings is just as unavailing as pleadings without evidence.

While the term "and did not liberate her unharmed," as I have said a moment ago, is in the language of the Statute, it is not such a term as is generally understood by the courts or by those whose duty it is to interpret them; and certainly it may not be left to speculation as to

519 what that term may mean or may include.

The term "And did not liberate her unharmed" could mean that she had the slightest pin-scratch on her arm. It could mean that every bone in her body was broken. It could mean that she had a black eye.

The Court: Is there anyone in a better position to know what her condition was than the kidnapper? Was he taken by surprise when the indictment charged that she was not liberated unharmed? Whoever the kidnapper was knows exactly what the facts were there.

Mr. Hogan: He can only know what the facts were by what the indictment charges. When he comes into this court or any other court on an indictment, he cannot know what the proof is going to be introduced as to the nature and extent of the injuries.

The Court: The kidnapper was there and knows what happened.

Mr. Hogan: That is granted, Your Honor.

The Court: Then he ought to know what the testimony is going to be.

Mr. Hogan: But the burden should not be on him to overcome a defect in the indictment. The burden is upon the government of the United States to draw and present him with a complete indictment in the beginning, so that when he comes into court he is prepared to meet what
520 is set out in that indictment.

The Court: I think a motion for a bill of particulars might have been asked for by you. If you think the term is ambiguous, if you want to know in what respect she was harmed, whether it was a broken arm or a scratched face by a pinpoint, you may have asked for a bill of particulars, but I don't think you need one in this case.

Mr. Hogan: But my point is—I surmised that the Court, in taking the contrary view a moment ago was going to say to me that that could have gotten by a bill of particulars and, meeting that situation, I will refer the Court to a case which said that that would be a futile and useless thing, and would not serve to make any otherwise imperfect indictment any better than it was in the very beginning.

The Court: Of course, if an indictment is imperfect, a bill of particulars doesn't cure it; but I have no view that the term "liberate her unharmed" is so ambiguous and so confusing that the ordinary person does not know what it means. It is very plain language. We know what "liberate" means; and we know what "unharmed" means, and to say that we have got to define that more closely seems to me to be a rather strained point of view.

Mr. Hogan: If it is not what Your Honor, the Court might understand that term to be, but it is what the
521 defendant might understand that term to be, or what he may expect to meet.

The Court: Well I think the defendant is an ordinarily reasonable man and would have no difficulty in understanding what that term means.

Mr. Hogan: Now, I want to point out, further, in my

argument that the indictment charges further in the language of the statute, that this defendant did knowingly transport and cause to be transported in interstate commerce a person who had been unlawfully seized, kidnapped and abducted.

Well, now following the line of view that the Court has expressed about this term, "liberate unharmed," I submit that there is not anybody in this court room who does not have a generally fair idea of what that term "interstate commerce" means, but yet the legislature which passed that law came along and used up Sections 408 and 408b of Title 18 to describe what is meant by the term "interstate" or "foreign" commerce. Now the legislature did not give any definition of the term "liberated unharmed" or "not liberated unharmed." Therefore, the term being a new term and certainly came into being following the passage of this law which was passed in 1932 and amended in 1933, that term has never had much opportunity in the courts to be defined.

Therefore, if the courts have not had an oppor-
522 tunity to define it, certainly the defendant, a layman, could not understand what the term means or covers in the indictment.

The Court: I understand your point, Mr. Hogan, and I believe on account of your being counsel in this case it was your duty to make it, and you have made it; and to argue it, and you have argued it. It is highly technical from my point of view and I don't think that I can maintain it.

You may take the motion as overruled and make your exception.

Mr. Hogan: That is all right—I mean, it is not really all right but it is all I can do about it; and I will have to reserve my exceptions.

Q. Now, Mrs. Stoll, at the time you left that apartment—

Mr. Hogan (Interrupting): Now Mr. Brown may I interrupt? I don't want to be obnoxious and every time a question about her injuries might be brought up to interpose an objection, but I would like to have it understood

that any time any question of her injuries or any extent of her injuries or what she claims her injuries to have been at the time she was liberated is brought up, I would like to have the record note my objection to that.

The Court: I understand that it is based on the same point that you have just made?

523 Mr. Hogan: On the same point.

The Court: But if you have any additional points to make, they should be made. Unless an additional point is made, we will understand that it is based on the same point that you have just argued without having to renew your objection.

Mr. Hogan: Yes, sir, without my taking an exception each time.

The Court: And likewise overruled, and likewise you are excepting.

Mr. Hogan: That is right.

Q. All right, Mrs. Stoll, will you tell the jury what was your physical condition at the time you left that apartment on October 16, 1934?

A. My head was still thickly clotted with blood and I was in a very weakened condition. I could hardly walk a block.

Q. What was the condition of your mouth?

A. I still had raw sores on my lips from the adhesive tape that had been put on and off so much.

Q. Now, after you walked that block with Mrs. Robinson and obtained that taxicab, where did you and Mrs. Robinson go?

A. We went to the home of Rev. Clegg.

Q. At that time was Dr. Clegg at home or just

524 Mrs. Clegg?

A. No, they were both at home.

Q. Now there is one point that I overlooked that I want to ask you about. Mrs. Stoll, I direct your attention back to the ransom money you have already testified about. Did this defendant, Thomas Robinson, give to you or to anyone in your presence any portion of that ransom money?

A. Yes; he gave to his wife some money that my family had given to her for traveling expenses, but it was

not the ransom money.

Q. Some other money rather than the ransom money. Is that right?

A. Yes.

Q. Now, after you arrived at Dr. and Mrs. Clegg's without relating any conversation that you had with them, as a result of your request, what was done then?

A. They took me to my home.

Q. Was that from Indianapolis, Indiana?

A. Yes.

Q. Where did you start back to? Louisville, Kentucky?

A. Yes.

Q. How far did you get?

A. Oh, I think we got almost to Jeffersonville before we were stopped by agents of the Department of Jus-
525 tice.

Q. At that time did you leave Dr. Clegg's car and get into another car?

A. Yes.

Q. Where were you brought then?

A. To my home.

Q. Back here? On Lime Kiln Road?

A. Yes.

Q. Mrs. Stoll, the ransom note that has heretofore been testified about, did you ever at any time see the ransom note?

A. No; I did not.

Q. Now, Mrs. Stoll, I will direct your attention again to the kidnap hideout in Indianapolis. With reference to the presence or absence of any telephone in that apartment, tell the jury your recollection on that?

A. There was no telephone in the apartment.

Q. And at any time did you ever discuss with the defendant Robinson what schooling or education that he had?

A. Yes, when he told me that it was known who he was and what his name was, on the second day he told me he had been to Vanderbilt University at Nashville.

Q. Upon your return home, Mrs. Stoll, were you placed

under the care of Dr. Frazier?

A. I was.

526 Mr. Hogan: Your Honor, that is highly leading.

The Court: It is leading. Objection sustained. It may be rephrased.

Q. Mrs. Stoll, after you returned home, did you receive any medical attention?

A. I did immediately, from Dr. Frazier.

Q. Dr. Harry Frazier, of this city?

A. Yes.

Q. Mrs. Stoll, on your return to Louisville, while Mrs. Robinson was in the car, was any money delivered to you by Mrs. Robinson?

A. Yes; she turned over the ransom money—the money that Robinson had given her.

Q. Do you know how much money it was? You don't know how much money it was? Do you or do you not know how much money it was?

A. No; it was part of the ransom money he had given her.

Q. What did you do with the money with reference to giving it to your husband or the FBI?

A. The Agent of the FBI had it a part of the time, they then gave it back to me, and I gave it to my husband.

Mr. Brown: That's all.

527 At this point a short recess was had, after which the following proceedings were had:

The Court: With respect to the spectators who are in the court room, I will repeat again, in case some of you have come in during the intermission, that people coming in and out so frequently as they have been doing today interferes with the proper taking and hearing of evidence. It is apt to distract the attention of the jury and also the parties in the case, and I am accordingly going to ask you that unless you are willing to stay in here during the time that the particular witness is on the stand, not to start. People will not be allowed to leave the court room or come in the court room while a witness is on the stand. At the close of each witness, people can leave and others can come in. I don't want this running in and running out while the

witness is testifying.

Mr. Brown, is that all for the direct examination of this witness?

Mr. Brown: Yes, Your Honor.

The Court: All right, Mr. Hogan.

Cross-examination by Mr. Hogan.

Q. Mrs. Stoll, what is your age?

A. Thirty-seven.

Q. In October, 1934, then, you were twenty-eight.

A. That's right.

528 Q. How tall are you?

A. About five foot three or four.

Q. Are you any heavier or thinner today than you were then?

A. I think I am a little heavier.

Q. Do you recall what your weight was nine years ago, or, rather, in October, 1934?

A. No, I do not.

Q. And what is your weight today?

A. About 115.

Q. You are the daughter, of course, of Mr. Will S. Speed of this city?

A. I am.

Q. On October 10th, 1934, was your attention attracted to this car or to any car that pulled into the driveway of your home on the Lime Kiln Road?

A. I heard a car drive up.

Q. Did you look out the window and see that car?

A. I did.

Q. And did you observe then what type of car it was?

A. I noticed it was a black car, black or dark blue, I can't remember which.

Q. Did you notice any other color distinction about that car?

A. No, I did not.

529 Q. Did you notice that the wheels were yellow?

A. I can't remember that I did.

Q. Did you remember anything at all about the color of the wheels?

A. No.

Q. So you are not prepared to say now what the color of the wheels was on that car?

A. No, I am not.

Q. You were then, when you noticed this car coming into your driveway, in your bed room?

A. I was.

Q. And that bed room is on the second floor of your home?

A. Yes.

Q. The guest room, I believe, is across the hall from that bedroom of yours?

A. It is.

Q. Now, with reference to the furniture in your own individual bed room at that time, I would like for you to tell the court and the jury what articles of furniture were in that individual bedroom.

A. A pair of twin beds and two chests of drawers, dressing table, chair, sofa, several small tables.

Q. Was that a large chair or just an ordinary type of chair?

530 A. Ordinary arm chair.

Q. Would you call it an overstuffed chair?

A. There was one, yes.

Q. Was there any pillow used in connection with that chair?

A. It had cushions, two cushions in it—one cushion, I think.

Q. In addition to the cushions, would you sometimes use a pillow to rest in that chair?

A. No.

Q. Now, in this guest room across the hall, will you tell what furniture was in that room?

A. There was a bed and two chests of drawers, a little dressing table, a rocker and chair.

Q. Did you use a pillow in connection with the rocking chair or any chair in the guest room?

A. Not in connection with the chair, no.

Q. I refer to a soft type of pillow that is sometimes used to rest your back or assist you to rest in a chair.

A. No. I think there were two pillows on the Chaise lounge in my bed room.

Q. Those were pillows not used upon the bed.

A. That's right.

Q. Now, when this man who had driven up to your
531 home came in, I believe you heard him talking to the maid.

A. I did.

Q. Was that the same voice that you heard from the man who later came up to the guest room?

A. Yes.

Q. How long, from the time you heard the voice of the man downstairs, until you saw that man in the guest room upstairs?

A. I don't know, between a half hour, I imagine—about a half hour, I imagine.

Q. Were you ill on this day?

A. I was. I had a bad cold.

Q. Was that the only trouble that you were experiencing on that day?

A. That's true.

Q. What had been the condition of your health up to that time?

A. Very good.

Q. You had not required any medical attention up to that time?

A. No.

Q. Could you hear this man moving about the house before you finally came face to face with him?

A. Yes. I could hear him working on the telephone. I could hear his voice talking on the telephone.

532 Q. What was the gist or nature of that conversation?

A. I heard him talking as any telephone repair man does.

Q. Did he appear to be talking to the home office of the phone or to some other repair man?

A. He did. He seemed to be talking to some other repair man on the telephone.

Q. Did he come first upstairs to the bedroom that you

had vacated, before he went to the basement of your home?

A. Well, I don't know when he went to the basement. I was upstairs.

Q. Do you know whether he ever went to the basement or not?

A. I didn't see him go to the basement.

Q. Well, did you hear him in the basement?

A. No, I don't think I could from upstairs. I couldn't hear him in the basement.

Q. How many rooms were in your home on this road?

A. Living room, dining room, kitchen, small pantry, two bed rooms and a bath room, and another small room.

Q. You didn't see him when he went into the bed room that you had vacated?

A. No. I was in the guest room with the door
533 closed.

Q. Could you hear this voice of this man talking to the maid as you were in the guest room?

A. Yes.

Q. It was plainly distinguishable.

A. Yes.

Q. No question but that was the same man whom you had heard downstairs in the beginning?

A. Yes.

Q. When this man who you say is the defendant came into the guest room in which you were then situated, were you sitting in a chair?

A. No, I don't think so. I think I was walking around the room.

Q. Then you were not so ill that it required you to be in bed.

A. Yes, I had been resting all day, but when I heard someone upstairs I got up and started walking around.

Q. Well, you had heard this walking around, though, in your bed room that you had vacated?

A. Yes.

Q. Were you alarmed at this man walking around upstairs before he came into your room?

A. No, I wasn't. I thought he was working on the telephone.

Q. Had you been in bed in your own room before

534 you moved across the hall to the guest room?

A. I had been resting.

Q. Do you recall now whether you were resting on the bed in the guest room or whether you were sitting in one of the chairs in the guest room when this man came into that guest room?

A. I don't remember exactly what position I was in.

Q. You can't say whether you were on the chair or on the bed?

A. No, I can't.

Q. When he came into the guest room, were you standing up or sitting down or lying upon the bed?

A. Oh, I am quite sure I was standing up.

Q. In what part of this guest room were you as he entered the door?

A. I think I was right near the door.

Q. So that when he came through the door, you were right face to face with him.

A. Yes.

Q. Did that alarm you at that particular moment?

A. Yes, it did. I was very much alarmed to see a strange man walking into my room.

Q. And what were your words to him?

A. "What are you doing in here?"

535 Q. Did you recognize him?

A. Of course not.

Q. Did you smile at him?

A. Of course not.

Q. Did you greet him in any other way than the way you have indicated, "What are you doing in here?"

A. I did not.

Q. I believe you stated on direct examination that after he announced his mission there, that you talked considerably to him.

A. Yes, I did. I tried to think of every argument I could think of to keep him from taking me away.

Q. He had not struck you up to that time?

A. No.

Q. Were you excited, or nervous, or calm?

A. I was very nervous.

Q. How did you manifest your nervousness?

A. Well, I don't know how I manifested it. I was nervous.

Q. Did your speech indicate that you were nervous or were you calm in your speech?

The Court: That's largely for someone else to testify to, isn't it, as to what her speech indicated?

Mr. Hogan: I can ask her, and I believe I will ask her, if she had any trembling in her voice.

A. I don't know whether I did or not, but I know
536 I was very nervous.

Q. Where was the maid when this man came through the door to the guest room?

A. She was in front of him.

Q. How far behind the maid was he?

A. Right behind her with a gun.

Q. Was he close enough to touch her with a gun or was he some feet back?

A. No, I think he was close enough to touch her with a gun, as I recall.

Q. Was he or not touching her with a gun?

A. I don't know whether he was actually touching her with a gun, but he was right behind her.

Q. What did he respond after you said, "What are you doing in here?"

A. He said he had come to kidnap me.

Q. What response did you make to that?

A. I can't remember my exact words, but I was certainly very much aghast.

Q. Did you say, "You can't get away with that. You are not a professional?"

A. I am sure I did not.

Q. Did you say anything about being Mr. Speed's daughter?

A. I don't think so.

537 Q. Do you say that you did not say any such words?

A. I do.

Q. You say now that you did not make any such expression?

A. Say what words, that I was not Mr. Speed's daughter? I don't know whether I did or not. I don't know whether he asked me. I am sure if he asked me if I was Mr. Speed's daughter, I would have said I was.

Q. Did you say anything to him in these terms or words to this effect, "You can't get away with this. You are not a professional."

A. No.

Q. "I am W. S. Speed's daughter."

A. No, I didn't say that.

Q. After he told you, as you said, that he was going to kidnap you, did you believe that he meant to do that?

A. I certainly did.

Q. Did you move away from the door or change your location in that room?

A. I don't remember that I did.

Q. In other words, did you sit in the chair or go sit upon the bed?

A. No, of course not.

Q. You just stood there.

A. Yes. I was trying to think of some way to
538 get away, if possible. I know I didn't sit down.

Q. What inducement monetarily or financially did you make to leave there?

A. I offered him a check.

Q. In what amount?

A. No amount that I know of.

Q. Up to that time he had not said anything at all to you about money, had he?

A. No.

Q. Then you did not, then, know whether he wanted money or wanted you, did you?

A. No, I didn't.

Q. Did you produce a check and attempt to write it?

A. No, I did not.

Q. Did you tell him in what amount you would fill the check out for?

A. No. I offered him a check, and that didn't seem—he said that wouldn't do any good, he was going to kidnap me anyway.

Q. He didn't display to you or in your presence the ransom note or the envelope in which it might have been contained.

A. No.

Q. Did he have adhesive tape on him?

539 A. Yes.

Q. Now, to refresh your recollection, I will ask you if he didn't find the adhesive tape in a dresser drawer in your home.

A. No. I don't think he did. I don't keep adhesive tape in dressing table drawers.

Q. Do you say that you did not have any adhesive tape there?

A. I am sure I didn't in the dressing table drawer.

Q. Well, in any drawer or any location?

A. I usually keep adhesive tape in the bath room, but he didn't enter the bath room.

Q. He did not go into the bath room for any adhesive tape then.

A. No.

Q. The question is, whether he had the adhesive tape on him or whether it was necessary for him to or whether he got it in your home.

A. He had it on him.

Q. Did he bind your feet or legs in any manner?

A. He did.

Q. Before you left the house?

A. When I was in the car he did.

Q. Before you left the house was your movement impeded?

540 A. My wrists were bound, but my feet were not bound until I was placed on the floor of the car.

Q. What was the maid doing while you say he was binding your wrists with this wire?

A. She bound the wrists. He stood there with a gun and told her to.

Q. Did she have any trouble in doing that?

A. Why, she was very nervous.

Q. Did she get so confused that she couldn't carry out his directions?

A. No, she bound them very tightly.

Q. Isn't it a fact that she got so confused that she could not do it, and that this man here assisted in doing it or did it himself?

A. He may have ended up by doing it tighter, but he certainly didn't—she started it. I can't remember whether he finished the job or not, but I know it was very tight.

Q. You think she bound you up then completely without any assistance from him?

A. No. I don't know whether he finished it or not, but I know he stood there with the gun.

Q. Now, he didn't during all of that time spent in that guest room, have that gun pointed at you or at the maid either, did he?

541 A. During the time it was on the bed he didn't.

Q. I will ask you if the gun was not placed at one time upon the mantel.

A. There is no mantel in that room.

Q. Or upon the dresser in that room.

A. No.

Q. That didn't happen?

A. No.

Q. Now where did you have a gun? Where was the location of your gun?

A. In the bed room, my bed room.

Q. That was, of course, across the hall from where you were then?

A. Yes.

Q. Had he struck you before you attempted to get your gun?

A. He had hit me the first time, yes.

Q. That first time didn't draw any blood, as I take it.

A. No.

Q. That was not a very hard blow?

A. Yes, it was. It caused a fracture.

Q. But it drew no blood or made no scalp wound.

A. It was on the bone.

Q. It didn't make any break in the flesh.

542 A. Yes, it did, but it was on the bone and it didn't bleed as hard as the other.

Q. What was that answer?

A. I said he hit me on my forehead the first time so that it didn't bleed as hard as the second time.

Q. What was done with the maid when you were asked to go to the car with him?

A. She was bound up in the guest room.

Q. Did you express any anxiety or wish to leave there?

A. To leave the house?

Q. Yes.

A. Of course not.

Q. You didn't do that?

A. Well, when he made the remark that he would kill Berry if he arrived while he was still there, I didn't resist any further.

Q. But were you anxious to go or did you express any desire or anxiety to get away from there?

A. Well, I was anxious to get away before Berry came.

Q. Oh, you were anxious to get away then.

A. I was only anxious to get away before Berry came, I was afraid he would shoot him.

Q. Did you express that anxiety to this defendant?

543 A. I don't know whether I did or not.

Q. Or anxiousness?

A. I don't know whether I did or not.

Q. You did not, then, wholly resist and try to remain in your home.

A. I did resist to every ounce of my strength.

Q. But then when you believed your husband might be on his way, you became anxious to get away from there at that time.

A. No.

Mr. Brown: I submit she has answered that question. He is putting words in her mouth.

Mr. Hogan: She is on cross-examination.

Mr. Brown: I submit she has answered.

The Court: I think she has answered the question once. If you want to ask it about some other point I think you can. Is there any reason to go over it again?

Mr. Hogan: I just wanted a clear answer to it. I will not ask it any more. I think we have had it pretty well

answered.

Q. You mentioned on direct examination, Mrs. Stoll, that the car turned to the left after it left the Berry Stoll or your home estate.

A. Yes.

Q. And you mentioned that a stop was made
544 somewhere along the way.

A. Yes.

Q. At what juncture or just what lapse of time had occurred when that stop was made?

A. I can't recall exactly. I think I said about a half hour, but I have no way of knowing exactly. It might not have been that long.

Q. Well, had enough time elapsed then for the car in which you were being driven to have gotten out of the City of Louisville?

A. I imagine so.

Q. I understood you to say this morning that he made a remark when the car stopped, "O. K."

A. I did.

Q. Was there any answer to that remark?

A. Not that I heard.

Q. Didn't the car on its journey through the streets of Louisville make some stops at the stop lights?

A. No, not that I was aware of.

Q. You were in the back of the car?

A. I was.

Q. You would have been able to have determined or detected that the car was stopping or slowing down from the momentum or cessation of the momentum of the car, would you have not?

545 A. I would have known if it was slowing down.

Q. You would have known if it were stopped, too, would you not?

A. Yes.

Q. Because you did know it.

A. Yes, I would have known if it had stopped.

Q. With that in mind then, did the car stop momentarily for some seconds, long enough to stop at some stop lights in Louisville?

A. Not that I can recall, no.

Q. To have gotten from Lime Kiln Road to the Brownsboro Road would have necessitated a travel of some two miles, would it not?

A. Yes.

Q. And to have gotten through Louisville, it would have necessitated a turn to the right at the junction of Lime Kiln with the Brownsboro Road.

A. Yes.

Q. Do you know or are you able to say whether the car turned left or right?

A. No.

Q. At any time after it originally turned left?

A. No, I don't know.

Q. So then you are not in position to say whether the car went out Brownsboro Road away from Louisville
546 or in Brownsboro Road towards Louisville on that journey, are you?

A. No.

Q. Assuming that this car went over the Municipal Bridge into Jeffersonville, would the time that elapsed between the time the car turned left from your place to the time the voice of the driver in the car had said "O. K." have been just about the time that it would have taken to drive from your home to Lime Kiln Road, in Brownsboro Road to Louisville and to the Municipal Bridge pay stations or pay stops?

A. I suppose that's possible.

Q. That took just about that much time then.

A. I tell you, I was not aware of time. I don't know.

Q. The driver said "O. K." when the stop that you mentioned occurred.

A. Yes.

Q. Had you been across the Municipal Bridge at any time in your life?

A. Yes.

Q. You are familiar with those platforms there where the bridge attendants stand?

A. Yes.

Q. They are elevated upon platforms, are they not?

A. Yes.

547 Q. That gives the bridge attendant a view into the interior of the car, does it not?

A. Yes.

Q. Did you utter any sound, or try to, when this car pulled up and stopped and the driver said "O. K."

A. No. My face was covered over with a blanket and newspaper. I didn't know where I was.

Q. But you did know that the driver was having a conversation with somebody.

A. Yes. How could I utter anything? My mouth was taped up with adhesive tape.

Q. Not whether you could utter any intelligible words, but did you moan or make any sound, or try to?

A. No. I couldn't have made much sound, the condition I was in.

Q. But the point is, you didn't try to.

A. No, I didn't try to. I couldn't. My mouth was taped with adhesive tape.

Q. Have you ever made a test of taping your mouth and determining whether or not you can moan?

A. No, I haven't.

Q. You don't know whether you could make a sound with your mouth taped?

A. Yes, I do. I tried to in the closet in Indianapolis.

548 Q. You didn't mention that on direct examination, Mrs. Stoll, about the closet.

A. Didn't mention what?

Q. Trying to make a sound in the closet, while you were on direct examination.

Mr. Brown: She wasn't asked about it.

The Court: I don't think she was asked about it.

Q. Then after this car stopped and the word "O. K." was uttered, how far or how long, rather, did it take before you were taken into what you said was a garage?

A. I think I answered that before. I said a little over two hours.

Q. The driver then left and came back and made some remark about "things are not in order," or words to that

effect.

A. I didn't understand what you said.

Mr. Hogan: Will you read the question, please.

(The last above question was read by the reporter.)

A. Yes.

Q. How much other time elapsed before the tape was removed from your mouth and you were unbound?

A. I think I answered that question before. I said about a half hour or so.

Q. You were then in the suburbs of what the
549 driver told you was Indianapolis.

A. Yes.

Q. Then, of course, you were able to talk, and I presume did talk to him.

A. I wasn't able to talk until the adhesive tape was removed from my mouth.

Q. After that was removed, you did talk to the driver.

A. Yes.

Q. Were you put in the front seat or in the rear seat when the adhesive was taken off and the wire was taken from around your feet?

A. In the front seat.

Q. What is that?

A. In the front seat.

Q. When you got to this apartment, the defendant expressed a desire for some food, is that correct?

A. Yes.

Q. And I believe you stated that you cooked him some eggs.

A. Yes.

Q. What kind of eggs did you fix?

A. Scrambled eggs, I think.

Q. Was there coffee or bread in the kitchen there?

A. Yes.

550 Q. Did you eat any of the eggs?

A. Yes.

Q. Did you drink some of the coffee?

A. I can't remember. I think I did.

Q. Was there coffee made on that occasion?

A. Yes.

Q. Who made the coffee?

A. I think I did. I don't remember.

Q. Did he drink some of the coffee?

A. I think so.

Q. Was anything else eaten at that time?

A. No.

Q. What time of the day or night was this?

A. About 7:00 o'clock, I think.

Q. After you had this meal consisting of eggs and coffee, what time was it then?

A. I really couldn't say. About 7:30, I guess. I don't know.

Q. What transpired between the time that you consumed the eggs and coffee until you say you were thrust in bed on that first night?

A. Nothing at all.

Q. What was the lapse of time between the time you ate the eggs and the time you say you were thrust in bed on that first night?

551 A. I don't think there was any lapse of time at all because I was sick right after I ate the eggs.

Q. Did the eggs make you sick or were you sick otherwise?

A. No, I was nauseated.

Q. Did the eggs cause that?

A. Yes.

Q. In other words, your own cooking nauseated you.

Mr. Brown: I object to that statement.

The Court: I believe it is better to put it in sequence of time. There may have been a number of things that nauseated her. Following the eating of the eggs.

Q. Following the eating of the eggs, Mrs. Stoll, how long was it before you became nauseated?

A. I think right away.

Q. Were you permitted to go into the living room of this apartment before or after you prepared these eggs?

A. Yes.

Q. Did you sit down in the chair or on the divan in that room?

A. I think I did.

Q. And you were able to and did converse with the defendant on that occasion?

A. Perhaps I did. I can't remember the conversation.

Q. Without being able to detail the exact words,
552 what was the topic of that conversation that first night after you had eaten and partaken of the eggs?

A. I can't remember any topic of conversation at all. I was feeling too ill at that time to talk.

Q. What did you do to cure or arrest your nauseated condition?

A. I lay down.

Q. Did you go into the bath room when you were nauseated?

A. I can't remember whether I did or not.

Q. The bath leads, as you have already indicated, off of the living room?

A. Yes.

Q. How long did you have a conversation with the defendant on this first night before you laid down on the bed?

A. I can't recall.

Q. Well, about how long?

A. I told you I couldn't remember any topic of conversation. I was feeling too ill.

Q. No, not the topic of conversation, but what time transpired from the time you were nauseated until you laid down on the bed?

A. I couldn't tell you that.

Q. Well, was it an hour?

A. I don't think so.

553 Q. Was it longer than that?

A. No, I don't think so.

Q. How much less than an hour was it?

A. Well, I really wasn't conscious of time.

Q. Did you sleep in one of the twin beds in the bed room?

A. I did.

Q. Did he sleep in the other twin bed on that occasion?

A. He did.

Q. When did this conversation arise with respect to time as to whether or not he was going—about the molestation of you?

A. I think that I had that conversation right after I got there.

Q. Up to that time had he given you any evidence or indication that he might want to molest you?

A. No.

Q. He had behaved perfectly so far as molestation—

A. Yes.

Q. —up to that time?

A. Yes.

Mr. Brown: I don't know what you mean by perfectly. She had received two blows on the head.

Mr. Hogan: She has answered the question.

554 Your objection is too late.

The Witness: Well, if you mean—

The Court: Let the witness explain if she has any explanation as to what she meant.

The Witness: He had not attempted to molest me any further after the blows on the head, if that's what you mean.

Q. So you slept in that bed that first night without being molested.

A. That's right.

Q. What time did you awaken or arise the next morning, which would have been Thursday morning, October 11th.

A. I think it was near noon.

Q. What time did the defendant arise that Thursday morning, October 11th?

A. About that time. I was tied in bed, I couldn't arise.

Q. Had you indicated any desire to arise before that time?

A. Well, I can't remember. My head was going around in circles the next morning.

Q. Your best recollection is that you made no request to be allowed to get out of the bed until about 11:00 o'clock, October 11th, which was Thursday.

555 A. Possibly.

Q. Then when you did get out of there, did you get out of your own volition or accord, or by request from you?

A. I think I probably asked to have my hands untied. I am sure I did.

Q. And that wish was acceded to and you were untied.

A. Yes.

Q. That was about 11:00 o'clock. What did you do about food on that second day?

A. I really can't recall what happened the second day, I was feeling too badly.

Q. Did you stay up the remainder of that day?

A. I can't remember.

Q. Did the defendant require any food?

A. Yes.

Q. Who fixed that food?

A. I don't remember. He went out and got food quite frequently.

Q. Did you prepare it or assist in the preparation of it?

A. I did on some occasions.

Q. Did you on this October 11th?

A. I can't recall that I did.

556 Q. How many meals do you recall that he ate on October 11th?

A. I told you I couldn't remember anything about that.

Q. Except for the time that he went out and was out procuring provisions or otherwise was absent from the apartment, how did you and he spend the time—in conversation?

A. Sometimes.

Q. What was the topic of the conversations usually?

A. The progress of the kidnapping, whether he had been able to contact my family, things such as that.

Q. He did not attempt to withhold any news from you, did he?

A. Well, he didn't tell me very much.

Q. He brought you the Indianapolis newspapers?

A. Yes.

Q. You were free to read and did read those papers?

A. Yes, that's true.

Q. How long did he absent himself on Thursday, October 11th, during the daytime?

A. I told you before that I really couldn't remember what happened that day, I was feeling too badly.

Q. Did you ever have occasion to go into the bath room?

A. Yes.

557 Q. And did you go into the bath room?

A. Yes.

Q. When was the first occasion that you went into the bath room?

A. I don't remember exactly the first occasion. It was the night I got there.

Q. You went in there the night you got there?

A. Yes.

Q. Did you go alone?

A. Always.

Q. Closed the door, I take it?

A. Yes.

Q. Did you lock the bath room door when you went in?

A. No.

Q. You could have done that, could you not?

A. Possibly I could have.

Q. But you didn't do that.

A. No, he was sitting outside on the sofa with a gun all the time I was there.

Q. But you could have locked the door and the door would have been locked between you and him?

A. Possibly, only he told me that I could close it, but not tight.

Q. Well, you stated a moment ago you did close it.

A. Yes.

558 Q. And you did do that?

A. Yes.

Q. So having it closed, it would have been but a small matter to have turned that catch or latch on the inside of that bath room, would it not have?

A. I suppose I could have.

Q. You never did do that during the whole time you were in that apartment, did you?

A. I can't remember whether I did or not.

Q. Mrs. Stoll, I show you Government Exhibit No. 13, and ask you if that does not represent the bath room window as viewed from the outside.

A. Well, I never saw the window from the outside.

Q. By what way did you enter this apartment?

A. Entered through the kitchen door, but it was dark so that I could not see anything.

Q. So on that occasion you were required to pass by this bath room window.

A. Possibly was, but it was perfectly dark and I couldn't see anything.

Q. Mrs. Stoll, I will show you a photograph of what purports to be the inside of that bath room, showing the condition existing as of the time you claimed you were in this apartment. Does that fairly and truly represent the condition as you remember it?

559 A. I guess so.

Q. Now that shows, I believe, a portion of the bath tub, is that correct?

A. I really can't remember what the bath room looked like.

Q. Well, that picture looks to represent the condition as you remember it on that occasion, does it not?

A. Well, I really, to tell you the truth, can't remember what the bath room looked like. I have no recollection of what it looked like.

Q. Did it have a window in it?

A. I don't know whether it did or not.

Q. Does that look like the window in the bath room in question?

A. Well, I think I stated before, I can't remember what the bath room looked like.

(At this point counsel for the defendant handed the photograph to the jury.)

Mr. Brown: You haven't done anything with it yet.

Mr. Hogan: She said that it represented or did represent—

The Court: She said she didn't remember, as I understand.

Mr. Hogan (To the reporter): Would you go
560 back and read—

The Court: We can get her own testimony from it.

The Witness: I said I really couldn't remember what the bath room looked like.

The Court: Can you or are you able to identify that picture as a fair and correct picture of that bath room or not?

The Witness: No.

The Court: That's the answer.

Q. I'll show you another photograph which purports to represent the bath room door of that bath room of that apartment in a closed position, alongside of which purports to represent a cabinet or linen cabinet of some type. Does that represent truly or accurately, or as you remember, the cabinet and closed door of that bath room?

A. No. I really don't remember anything about what the bath room looked like.

Q. Is there anything wrong with your memory, Mrs. Stoll?

Mr. Brown: That's objected to.

Mr. Hogan: She said she can't remember.

A. It is very hard after nine years to remember exactly what a bath room looked like.

Q. Is it any harder after nine years to remember
561 what a bath room looks like that—

The Court: I think the question is argumentative.

Mr. Brown: Purely.

The Court: Isn't it a question of argument?

Mr. Hogan: I didn't intend it so, Your Honor.

The Court: It is not a fact. It is a question of opinion, isn't it?

Q. Is your recollection of the bath room or failure of recollection of the bath room, any worse today than your recollection of what this defendant looked like or what he did nine years ago?

A. Of course not.

Q. Do you just don't want to remember what the bath room looked like?

Mr. Brown: I suggest the witness has given every indication of wanting to tell a truthful story. That's argumentative.

Mr. Hogan: I am trying to ask question of fact without any argument at all.

The Court: All right, proceed, but don't proceed unduly on the same point, Mr. Hogan.

Mr. Hogan: All right, sir.

Q. Now, how many times during the seven days that you were in this apartment, did you have to use the
562 bath room?

A. Oh, every day.

Q. At least once, and I take it more than once.

A. Yes.

Q. On any of those occasions did the defendant ever accompany you in the bath room.

A. No.

Q. Did you on those occasions close the door as you used the bath room?

A. Yes.

Q. What happened on the evening of Thursday, October 11th?

A. I can't remember what happened. He went out to make a telephone call, I think.

Q. Did you have any conversation with him after he returned on that evening?

A. I can't remember who he telephoned. I think he telephoned his father.

Q. Did he tell you that when he had returned?

A. He told me he had made a telephone call. I can't remember what he told me whom he talked to.

Q. After he returned, did you and he stay in the apartment and carry on a conversation?

A. Of course.

Q. What was the topic of that conversation?

563 A. I can't remember.

Q. Do you remember the living room of this apartment?

A. Yes.

Q. How many windows did it have?

A. Several, I think, possibly. I don't remember exactly.

Q. How many windows did the bedroom have?

A. One or two, I don't remember exactly which.

Q. Were those windows high from the floor or were they just reasonably high from the floor?

A. They were ordinary windows, I think.

Q. What was the view from the living room window?

A. The blinds were drawn on all occasions.

Q. What view, if any, was from the bed room window?

A. I never saw out of it. The blinds were drawn.

Q. What view, if any, was from the kitchen window or windows?

A. The blinds were drawn there, too.

Q. What view, if any, was from the bath room window?

A. The blinds were drawn.

Q. What was that you said?

A. I can't remember whether the blinds were drawn or whether the window was so that you could see out of it.

Q. Now you do remember there was a window in the bath room.

564 A. I think there was, yes.

Q. Your recollection is a little bit better now than it was a little bit ago.

A. I never said there wasn't a window. I just said I couldn't remember what the bath room looked like.

Q. As a matter of fact, wasn't there a window in that bathroom of the usual type bath room window, stained glass type of window?

A. I think so.

Q. And wasn't that window of the type that could be raised or lowered?

A. I don't know. You could probably raise it like any window, probably.

Q. And there was a shade that you could pull up or down?

A. Possibly. I don't recall.

Q. And while you were in this bath room, you were at

liberty and inaccessible from this defendant?

A. No. He always sat on the sofa in the living room, right outside, could have heard any attempt I made to open that window.

Q. This kitchen opens out onto a little porch, does it not?

A. I don't know.

Q. You cooked and prepared meals in that
565 kitchen from day to day, did you not?

A. Yes, but the blinds were drawn.

Q. Did you see Mrs. Frances Robinson when she came to that apartment on Tuesday?

A. I only saw her when she was in the house.

Q. From your location in the bed room could you not have seen her enter through that kitchen door?

A. I saw her when she was in the kitchen. I did not see her until she entered.

Q. You did not see her come into the kitchen?

A. I saw her in the kitchen.

Q. You knew that there was a porch that led from the kitchen of this apartment?

A. No. I don't know anything about the outside. It was dark when I came in.

Q. Did you ever hear footsteps or voices back there?

A. I think the milk man came once.

Q. Did he come regularly and daily?

A. I don't know. I think he left milk there once a day.

Q. Did he have any regular time to come or did he come at regular times?

A. I never saw him. I don't know.

Q. Not that you saw him, but did you hear him?

A. No, I don't think I did.

566 Q. To your best recollection then, the milk man came about every day?

A. Well, I know he left the milk there. I never saw him. I don't know what time he came or anything about it.

Q. What was to have prevented your going into the bath room on the occasions the milk man came and hollering out the window that you were a captive?

A. Because I was never left in the room by myself.

Q. But you were not prohibited from going to the bath room at any time, were you, Mrs. Stoll?

A. Well, the milk man came in the morning when I was tied in bed, early in the morning.

Q. Who collected the garbage from those apartments?

A. I haven't any idea.

Q. Was it collected?

A. I don't know.

Q. Would you say that you never heard any garbage cans being shuffled around outside that apartment?

A. No, I never heard any.

Q. Isn't it true that the garbage can from the front apartment and the garbage can for this apartment No. 2 are kept and located, and were kept on that occasion, on the porch right below or beneath the bath room window?

A. I don't know anything about it because I
567 didn't know anything about the porch.

Q. You never exercised a woman's curiosity during all that time that you were in that apartment, to try to raise that bath room window and take a view of the surrounding premises?

A. No. I was scared to death. He was sitting on the sofa outside with a gun.

Q. But you were inside the bath room with the door closed.

A. I know, but if I made the slightest sound he would have been right there.

Q. But you could have locked that bath room door and locked him out?

A. Well, possibly so, but he could have run around outside.

Q. But that would not have prevented your outcry to the adjacent apartment or to the persons in the front apartment.

A. I didn't know anything about the adjacent apartments or who was in them, or anything about it.

Q. Well, did you want to get out of that apartment?

A. Of course I did.

Q. Wasn't it a good chance to take, to make an out-

cry through that bath room window?

A. No, it certainly wasn't. I had been hit on
568 the head twice.

Q. Wasn't it reasonable to believe that if you had made an outcry, that somebody would have investigated it?

A. No. I didn't know whether anybody was anywhere near or not.

Q. And you did not take the trouble to raise the window and find out.

A. No. I didn't want to be shot. I had already been hit twice.

Q. You were behind this door, though.

A. I know, but he was right on the other side.

Q. Now I will ask you, Mrs. Stoll, even assuming that he was right on the other side of that door, if it were not possible for you to have stepped to the right of that door, in front of that linen closet, so that if he had shot through that door you would not have been in range of his fire?

A. I really don't know.

Q. You won't say.

A. I don't know, but I know one thing, I was in such a weakened condition at that time that I don't think I could have gotten through the window.

Q. Your voice could have gotten through, could it not?

A. Possibly my voice could have, but I didn't
569 know that anybody could have heard me if it had.

Q. At any rate, you never tried it.

A. No, I did not.

Q. Now, with reference to Thursday, October 11th, in the evening, what time did you retire on that occasion?

A. I really couldn't say.

Q. Is your recollection bad as to that?

A. I can't remember every day what happened every hour.

Q. What is your best judgment of the time you retired on that second night?

A. I haven't—I don't know.

Q. Was it early or late at night?

A. I really couldn't say.

Q. Did you have a radio or clock in the room?

A. No.

Q. Did you or he have any time-piece?

A. No; I don't know whether he did; I didn't.

Q. You could tell, of course, from the rays of the sun whether it was day or night?

A. Yes.

570 Q. Mrs. Stoll, will you take this photograph, which purports to portray the sidewalk and the South side of the apartment in which you claim you were held, and part of the apartment to the South of that. Does that reasonably and truly represent the view toward the two buildings as you remember it when you were being taken into the rear of that apartment?

A. I told you that I had no idea of what the apartment looked like. It was dark.

Q. When you say "apartment" you refer now to the outside?

A. Yes.

Q. Now, what time of the day or night did you and Mrs. Robinson leave that apartment on Tuesday following the Wednesday that you went there?

A. Me and who? I never left the apartment.

The Court: You mean the day she was released?

Mr. Hogan: Yes, with Mrs. Frances Robinson.

A. You mean the day I was released?

Q. Yes?

A. What time did we leave?

Q. Yes?

A. About two o'clock.

Q. That was in the daytime?

A. Yes.

571 Q. And by what door, with reference to the rear door or the front door, of the apartment did you and Mrs. Robinson leave?

A. I think we left by the front door.

Q. I show you a photo that purports to portray the front door entrance and the court and outside windows of the apartment in which you were located.

A. Yes.

Q. Does that fairly represent that situation?

A. I expect it does. I do not recall that very clearly.

Q. It looks about like you remember it, doesn't it?

A. I think so.

Mr. Hogan: I would like to show this photograph to the jury.

The Court: Let the stenographer identify it before you show it to the jury.

Mr. Hogan: I don't intend to introduce this now.

The Court: You can't show them to the jury unless you introduce them.

Mr. Hogan: All right. Let these photographs be marked Defendant's Exhibits Nos. 1, 2 and 3.

The Court: Members of the Jury, counsel advises me that this examination will probably continue for
572 some 30 or 40 minutes, so I think it advisable that we take a short recess now.

Do not discuss this case among yourselves or let anybody talk to you about it or in your presence.

There was a short recess, after which the following proceedings were had:

Cross-examination Continued by Mr. Hogan.

Mr. Hogan: If Your Honor please, I would like to introduce this first photograph as Defendant's Exhibit No. 1 in evidence.

(The photograph which had already been identified as Defendant's Exhibit No. 1 was handed to the Reporter and filed.)

The Court: Now if you have any other pictures that are going to be introduced, do that and let the jury look them over at the same time.

Q. I show you another photograph or view which purports to show the entry of the living room. Does that look like the interior of the living room of that apartment?

A. I think so.

Q. That shows that living room to have three windows, doesn't it?

A. Yes.

Mr. Hogan: I would like to introduce that in
573 evidence as Defendant's Exhibit No. 2.

(The photograph which had already been identified as Defendant's Exhibit No. 2 was handed to the Reporter and filed.)

Q. Now I show you another view, it is not a complete part of the picture because some of the other conditions do not represent the same situation or purport to represent the same situation that existed in the bed room at the time in question, but I will show you what purports to represent the windows of that apartment of the bed room. Does that represent, accordingly as you remember it, the bed room windows?

A. Well, possibly, but the blinds were always down so I did not know what was outside the windows.

Q. Not with respect to the view outside of the windows, but with respect to the location and size of the windows. Does that truly represent those windows?

A. I think so.

Mr. Hogan: I now would like to introduce this as Defendant's Exhibit No. 3.

(The photograph which had already been identified as Defendant's Exhibit No. 3 was handed to the Reporter and filed with the record.)

Mr. Brown: We have no objection to that exhibit, except of course the blinds being always drawn, it would not show what was outside.

574 The Court: It may be introduced to show the location and size of the window rather than anything that might be seen from the window.

Mr. Brown: That's right.

Mr. Hogan: That's right.

The Court: The jury will consider it only in that respect.

Q. Mrs. Stoll, were you at any time ever restricted the use of the bath room?

A. No. I was allowed to go to the bath room as long as he sat opposite on the sofa.

Q. When you were in there you had access to the wash basin and, I suppose, did use it?

A. Yes.

Q. And you turned the water on there?

A. Yes.

Q. And you had cause, I take it, to flush the toilet?

A. Yes.

Q. And you did do that?

A. Yes.

Q. That made noise, of course, by the running of the water and the flushing of the toilet?

A. Yes.

575 Q. Couldn't you have opened the windows during that process and the noise of the opening of the window not be detected by the defendant?

A. I doubt that very much.

Q. Did Mr. Robinson ever bring into the apartment any beer?

A. He did, on several occasions.

Q. What brand of beer was that?

A. I don't know.

Q. To refresh your recollection, was it not Patrick Henry brand?

A. I really couldn't say.

Q. Did you drink any of that on any occasion?

A. I did on several occasions. I had very little else to eat and I needed anything I could get to get a little strength.

Q. How many times would you say he brought beer into the apartment?

A. Perhaps once a day.

Q. How much would he bring in on each occasion?

A. I think he brought a bottle for himself, and I had a glass, usually.

Q. Would he bring two bottles, one for himself and one for you, and you participated in drinking part of it?

A. Yes.

576 Q. What type of coat did you have around you when you left your home on Lime Kiln Road?

A. A blue and white checked tweed coat, with

a cape.

Q. Did you take it to the apartment at Indianapolis?

A. Yes.

Q. What did you do with it after you got to Indianapolis at this apartment?

A. I kept it on all of the time—I slept in it.

Q. Did you ever put on any dress of anybody's?

A. Yes, he allowed me to put on one of Mrs. Robinson's dresses.

Q. Did you say you kept this coat on all the time and slept in it?

A. Other than the time I took it off in the bath room.

Q. All the time you were there?

A. I might have had the coat off after I had the dress on—I can't remember that.

Q. Did Mr. Robinson discuss with you during your stay in that apartment that he had worked for Mr. C. C. Stoll?

A. I think he did—but I can't remember.

Q. Did he say anything to you about Mr. Stoll having it in for him or prosecuting him?

A. I cannot recall whether he did or not.

577 Q. Well, isn't it true that he did tell you that?

A. No, I will not say that it is true.

Q. You just say that you do not recollect it?

A. No. I am sure he did not say that.

Q. Did he talk to you about having worked for Mr. C. C. Stoll, and that Mr. Stoll was blocking his efforts or had blocked his efforts to obtain employment?

A. I do not recall that.

Q. What was his discussion about Mr. C. C. Stoll?

A. I really can't remember what he said about Mr. C. C. Stoll.

Q. You only remember Mr. Stoll's name was brought into the conversation?

A. I can't be sure about that.

Q. What happened on Friday, October 12th?

A. That was the day that he telephoned his father and his father told him that it was known who he was, and that was the first time that I knew who he was.

Q. Do you say that that was the first time that you ever knew what his name was or who he was?

A. Yes.

Q. Did he tell you from what State he had come?

A. Yes; that was when he told me that he had been to Vanderbilt University.

Q. And you were able to detect that he had a
578 southern tone of voice?

A. Yes.

Q. What else did he tell you on this Friday?

A. He told me something about having gone to Vanderbilt; and I believe he told me something about a robbery he had participated in.

Q. Did he discuss with you any fact about his family?

A. No; I cannot remember that he did.

Q. Did he tell you that he was married?

A. Yes; I knew he had a wife.

Q. Did he tell you that he had any children?

A. I do not remember.

Q. Did he leave the apartment other than to go and call his father on this October 12th or, rather, reported that he had gone and called his father?

A. I think he went and called his wife.

Q. Well did he tell you he had called his father before he told you that he had called his wife?

A. I think he did.

Q. Was he getting worried about anything?

A. Yes he was very much disturbed because he said the police were surrounding his father's house.

Q. How did he manifest his anxiety?

A. He was very angry. He said my family had
579 double-crossed him—that was his words—because they had called the police in.

Q. When he got very angry, as you say, what manifestation came on his face that readily told you that he was in an angry condition?

A. He was angry as anybody else would be angry.

Q. Did a change appear in his eyes or face?

A. No.

Q. Did he beat on the table or kick the furniture

around.

A. No.

Q. In other words he just got mad or angry?

A. Yes. He used bad language.

Q. Now on Friday night, do you recall what time you retired?

A. No; I do not.

Q. Do you recall anything else that happened on Friday October 12th?

A. No I don't, other than those telephone calls. Yes, I think I wrote to Berry. I had been urging him to let me get in contact with my family in some way, and he allowed me to write a note to Berry; and he went out and came back and had not mailed it.

Q. Now you wrote a letter to Miss McHenry and a letter which you termed "Dear Mr. Intermediary"?

580 A. Yes.

Q. Did you write any other letters than those?

A. That was the day I wrote to the intermediary. I think I said that before.

Q. That was Friday?

Mr. Brown: Whatever date the letter shows. What is the date of the intermediary letter?

Witness: It was Saturday.

The Court: October 13th was the date of the letter to the intermediary. The 14th was the date of the letter to Berry.

Q. So you wrote 2 letters one day, that is the 14th of October, one to "Dear Seat," your friend Miss McHenry, and one to your husband, Mr. Berry Stoll; and the day previous to that, or Saturday, October 13th, you wrote a letter addressed to "Dear Mr. Intermediary"?

A. That is right, and that was the same day I think that I wrote the letter to Berry that he did not mail.

Q. So instead of writing 2 letters on the 14th, you wrote 2 on the 13th. Is that your idea about it?

A. Well I wrote 2 letters on the 14th, too.

The Court: She wrote 4 letters altogether. She wrote 2 on the 13th and 2 on the 14th, and one on the 13th was not mailed so far as you knew?

Witness: That is right.

581 Q. The one to your husband on the 13th was not mailed?

A. That is right.

Q. Now, what happened on Saturday?

A. I said that was the day that I wrote to the intermediary.

Q. Other than the writing of the letter?

A. I can't remember.

Q. I suppose he went and got provisions?

A. Yes; and telephoned. That went on every day.

Q. And got beer, I suppose?

A. I guess so—I don't recall.

Q. And what time did you or he retire on Saturday evening?

A. I don't know.

Q. Was it late or was it early in the evening?

A. I really don't know. It was after he made his telephone calls.

Q. He at no time ever molested you, as you have said?

A. No.

Q. And after that first conversation that you had with him about that, he did not talk to you any more about that?

A. No.

582 Q. Nor you to him?

A. No.

Q. Was his conduct that of a gentleman during his stay there?

A. Yes, I would say that it was.

Q. Did anything unusual occur on Sunday?

A. Well no, I don't think so. That was the day that he had the telephone conversation with Miss McHenry.

Q. And during the time that you were there and he was in the apartment, you had discussions with him about various matters?

A. The progress of the kidnapping.

Q. Was that the chief topic of conversation?

A. Yes.

Q. Did anything unusual happen on Monday?

A. That was the day that we were expecting the ransom money to arrive.

Q. Well, did it arrive on that day?

A. No; not until the next day.

Q. That was the next day, the Tuesday, when Mrs. Robinson arrived there?

A. Yes.

Q. She got there about 9 in the morning, I believe?

A. Yes.

Q. After she came there and entered that apart-
583 ment, what were her first words?

A. I think she said, "Hurry and get away. They are following you."

Q. Did you say anything to her or did she address any remark to you?

A. No; I think she said to me, "How are you?"

Q. Did you answer her?

A. No.

Q. And what was your condition at that time?

A. I was tied in bed.

Q. Didn't Mrs. Robinson offer to untie you?

A. No.

Q. When she got there?

A. No.

Q. Do you state that that is not true?

A. That is not true.

Q. She did untie you, didn't she?

A. No.

Q. She never did?

A. Only after he had left the apartment on the day that I was released.

Q. Now something was said about a 24-hour interval. Will you explain what you meant by that?

A. Yes; he threatened to kill both of us if we did not stay there for 24 hours when he left the apartment.

584 Q. I will ask you, Mrs. Stoll, if it isn't true that you were perfectly willing for him to have a 24-hour head start?

A. I certainly was not.

Q. I will ask you if it isn't true that you were entirely

willing for him to go and get started, and that that met with your approval?

A. It certainly was not.

Q. I will ask you if you did not express a feeling of sorrow for him?

A. I did not.

Q. Did Mrs. Robinson, Mrs. Frances Robinson, get you any food during that day?

A. Yes.

Q. More times than one or just on that one occasion?

A. Once.

Q. When was that?

A. After he had left the apartment.

Q. And what did that consist of?

A. Sandwiches and a bottle of beer.

Q. To refresh your recollection I will ask you if she did not get you a glass of milk before she went and got you the sandwiches?

A. Yes.

585 Q. And you drank that?

A. Yes.

Q. That was about 11 o'clock in the morning?

A. Yes.

Q. What time did you have the sandwiches and the beer?

A. I don't know—about one, I guess.

Q. How many sandwiches did you have, and how many bottles of beer did you have?

A. One glass of beer and one sandwich is all I can recall..

Q. I will ask you if it is not true that you ate one sandwich and drank 2 bottles of beer?

A. I don't think so. I don't think I ever drank 2 bottles of beer in my life at one time.

Q. You testified previously in this Court, in October 1935, didn't you?

A. Yes.

Q. I will ask you if this question was not asked you on that occasion, the occasion of this former trial:

"Didn't she (referring to Mrs. Frances Robinson) go out and get two sandwiches and 4 bottles of beer; and didn't you eat one of the sandwiches and drink 2 of the bottles of beer?"

And didn't you answer:

586 "Yes"?

A. I don't know. I can't recall it. I was in such a weakened state then that I probably did.

Q. The question isn't whether you ate them or didn't, but it is whether you testified to that in this court, or to that effect. Wasn't that question asked you and didn't you make that answer?

A. Maybe I did. I don't recall.

Q. Now, after you left the apartment with Mrs. Frances Robinson on Tuesday, October 16th, where did you and she go?

A. We went to the drug store and she called a taxicab.

Q. And where was that drug store located?

A. About a block away, on the corner.

Q. How did you get to that drug store?

A. We walked.

Q. Did you carry anything?

A. No.

Q. Did Mrs. Frances Robinson carry anything?

A. She had the money that was given to her. I don't recall her carrying anything else.

Q. Didn't she have a radio?

A. No.

587 Q. What else did she have?

A. I don't remember that she had anything except she had her pocketbook.

Q. Didn't she have a paring knife, or something?

A. Yes; I think she did have a knife.

Q. And didn't she likewise have a radio?

A. No.

Q. You distinctly say she did not?

A. Yes.

Q. What did she do at the drug store?

A. Mrs. Robinson called a taxicab.

Q. Did you have anything to eat in there?

A. No.

Q. Did anything else transpire there at the drug store?

A. No.

Q. Did you buy any articles in the drug store?

A. No.

Q. Any medicine?

A. No.

Q. Or did she?

A. I don't think so.

Q. She merely placed a phone call?

A. Yes.

Q. And you had walked from the apartment to
588 the drug store?

A. Yes.

Q. And when the taxicab came you were taken in the cab to the home of the Rev. Clegg?

A. That is right.

Q. How long did you stay at the home of the Rev. Clegg?

A. Not long—long enough for him to get ready to drive me to Louisville.

Q. Let's retrace just a minute from the time just before you left the apartment and the time that you were with Mrs. Frances Robinson. Did you and she have any conversation while you were there?

A. I think we did.

Q. What were you talking about?

A. I really can't remember.

Q. I will ask you if you were not just talking, as you termed it once, about trivial matters?

A. I think so.

Q. When you got to Rev. Clegg's he was not immediately there, was he?

A. No, I think he was in the house.

Q. To refresh your recollection, I will ask you if it was not necessary for Mrs. Clegg to locate him in the City?

589 A. Well I am not sure.

Q. You don't know whether he was or was not there?

A. No; I do not.

Q. Was it not necessary for her to locate him so that he might use his car in returning you to Louisville?

A. Yes.

Q. Did you phone anybody from the Rev. Clegg's?

A. Yes, I phoned my friend, Miss McHenry, to tell her I was coming home.

Q. And how long, what period of time, did you spend in the Clegg home?

A. A half hour or so.

Q. And then you started on to Louisville?

A. Yes.

Q. Mrs. Frances Robinson was with you?

A. Yes.

Q. And Mr. and Mrs. Clegg?

A. Yes.

Q. While you were in the Clegg residence, did anything unusual occur there?

A. Yes; somebody, a man, was out on the front lawn and I ran in the back—I was scared to death. I thought I was still being followed.

590 Q. What happened to the coat that you had used and taken with you from Louisville to Indianapolis?

A. I had it on.

Q. Was that a tweed coat?

A. Yes.

Q. Of a bright color?

A. Of blue and white check.

Q. Easily noticeable?

A. Yes, but Mrs. Clegg lent me one of her coats to put on in addition, as it was cold.

Q. I understood you to say that this tweed coat was a heavy coat?

A. Well not very heavy.

Q. Well it was not very light?

A. It was a spring or fall weight.

Q. I will ask you if the reason you changed coats was because you did not want to be detected and that you might allow the defendant to get along and not be apprehended?

A. No, that is not true. It was very cold, and I was feeling very badly and I asked Mrs. Clegg if I might use one of her coats. It was getting along late in the afternoon then.

Q. You deny that you made a change in coats to divert the attention from you?

A. I do.

591 Q. Did you use the phone in the drug store?

A. No.

Q. Did you use the phone in the Rev. Clegg's home to call anybody other than Miss McHenry?

A. No.

Q. Did you try to use the phone in the drug store to notify the FBI or the Indianapolis authorities?

A. I did not.

Q. Did you do that in the home of the Rev. Clegg?

A. No.

Q. You had access to the phone in the drug store and in the Clegg home?

A. Yes.

Q. But you did not do that?

A. No. I was very scared was the reason I didn't. I was sure—I was led to believe that there were two confederates that were following me. I thought the kidnapper was still close by and a man had appeared on the lawn of Mrs. Clegg's house while I was there. I thought it was either he or one of his confederates, and I was thoroughly frightened at that time.

Q. Well a man had not appeared on the lawn when you were at the drug store?

A. No. I was anxious to get to some member of my family as soon as possible. I might also add that I

592 knew nothing of Mrs. Robinson. I did not know whether she had a gun on her.

Q. Well now she had released you, hadn't she?

A. Yes, but still she had brought the ransom money.

Q. And she had gone out and brought you beer and you had discussed the topics of the day with her?

A. That's true but that didn't mean anything.

Q. She had not threatened you or anything?

A. No she didn't but I didn't know how much she was working with her husband.

Q. And I believe you took up for her when the FBI arrested her at Scottsburg, Indiana?

A. Yes, I was grateful to her because she had unbound me there and released me.

Q. And you were so grateful to her that you refused to proceed to Louisville until she was put back in the car in which you were?

A. Perhaps. I was so afraid of being left in that closet that I was grateful to Mrs. Robinson for releasing me.

Q. Isn't it a fact that you knew he was gone and had left there?

A. No; I did not.

593 Q. And he came back and told you and Mrs. Robinson that he was gone?

A. Yes, and he came back.

Q. I mean after he left the first time he came back and didn't come back any more?

A. He came back about a half hour later.

Q. And you had reason to believe that he was gone and would not be back?

A. No I did not. I imagined he was close by.

Q. Were you living in Louisville or Jefferson County in May and June in the year 1931?

A. Yes.

Q. Now you say that you had never seen or known the defendant before this occasion?

A. That is true.

Q. I will ask you if it isn't true that you knew the defendant at the time he was employed at the Second and Broadway filling station at the Stoll Oil Refining Company?

A. No; I didn't.

Q. I will ask you if on occasions when you would go

there to have your car serviced if he isn't the one that on some of those occasions serviced your car and talked to you?

A. No. I do not recall of ever having seen him before.

594 Q. And I will ask you if on another occasion you did not see him and talked to him at the River Road Station or plant of the Stoll Oil Refining Company during the year 1931, during the time that he was employed here at Louisville?

A. I do not ever recall having seen him before.

Q. You deny emphatically ever having seen him or talked to him before this occasion?

A. I certainly do.

Mr. Hogan: That is all.

The further proceedings in this case was adjourned until Thursday morning, at 9:30 a. m., December 2, 1943.

595 Convened pursuant to adjournment at 9:30 a. m. Thursday, December 2nd, 1943, and proceeded with the trial as follows:

The Court: If there are any witnesses in the court room, please retire to the hall and remain until you are called. The witnesses are not to be in the court room while the trial is going on. Also keep in mind that while the witness is on the stand, people will not be permitted to enter and leave by the main door. They can do so between witnesses or during recess, but while a witness is testifying we do not want the running in and out of the court room.

Are you ready to proceed?

Mr. Brown: Yes. Dr. Frazier.

DR. HARRY S. FRAZIER called as a witness in behalf of the Government, was duly sworn by the Clerk and examined and testified as follows:

Q. State your name to the jury.

A. Harry S. Frazier.

Q. What is your business or profession?

A. Doctor of medicine.

Q. Of what school or colleges, or universities, are you a graduate?

A. I graduated and received my degree of medicine from the University of Louisville in 1926.

596 Q. Since 1926, have you continuously followed your profession?

A. Yes, I have.

Q. Here in the City of Louisville?

A. In Louisville.

Q. During the following of your profession, have you had occasion to treat wounds of various kinds, Doctor?

A. Yes, naturally.

Q. On Octber 16th, 1934, did you have occasion to examine Mrs. Alice Stoll?

A. I did.

Q. Were you her regular family physician?

A. No, I had not been.

Q. Where did you see her on October 16th, 1934?

A. I saw her at her home, at about 9:00 o'clock that night.

Q. Is that the home on Lime Kiln Road?

A. On Lime Kiln Road.

Q. At that time did you examine Mrs. Stoll?

A. I examined Mrs. Stoll, and it was very shortly after her return. I found her—

Mr. Hogan: I object to anything that the witness may offer or say in regard to what condition he found her in, based upon my objection as of yesterday, the same point.

597 The Court: All right. The objection is overruled. Exception.

Q. All right, just tell how you found her there.

A. Mrs. Stoll was utterly worn out, she was pale, bedraggled, had circles under her eyes, she had sores across her lips with some remnant of the dirt that adhesive plaster will leave at its margins, her blood pressure was 148 over 90, and her pulse was rapid, 96.

Q. Stop there and explain to the jury what that blood pressure rate means.

A. Well, that simply means that, though outwardly calm, she was under a terrific nervous tension and that was its reaction, just to boost up her blood pressure and accelerate her pulse rate. She was not trembling, she had no difficulty in expressing herself, but she did have, first, a rounded swelling on her right temple which was an inch and a half in diameter. It began just under her hair line and covered pretty much the entire temple. This place was not discolored as the usual bruise is, but was quite tender to touch and quite hard, and I felt that that represented bleeding under the skin that covers the bone, the periosteum, and the mere fact that it did not discolor and was so long absorbing, going down, made me believe that perhaps there the actual integrity of the bone had been interrupted. The other injury was on the back of her
598 head a little above and behind the ear, and that was covered up by a clot of blood which had matted the hair also, and some red stuff was also on it which Mrs. Stoll said was mercurochrome.

Mr. Hogan: That's objected to.

The Court: Objection sustained to what Mrs. Stoll said. The jury will not consider that part of the testimony.

A. (Continuing) This cut in the scalp was an inch long. It was partially healed. The edges were remarkable to say, in apposition, that is, they were together. It was the sort of cut that should have had at least two stitches taken in it to be sure of good results, but, fortunately, the wound had not gaped and healing was in process. All that was necessary to do was to clean off the blood with soap and water and peroxide, and then I covered that with flexible collodion, the old fashioned new skin.

Q. What, in your opinion, Doctor, had caused the wounds that you have described?

Mr. Hogan: Now that's objected to.

Q. Or what was capable of causing the wounds that you have described?

Mr. Hogan: That's objected to.

The Court: I believe the objection should be sustained. I don't think that that's important.

Mr. Hogan: Without waiving the objection heretofore

599 made, I would like then to ask the Doctor—

Mr. Brown: Wait a minute. I am not through yet.

Mr. Hogan: You are not through?

Mr. Brown: No.

Mr. Hogan: I misunderstood you, Mr. Brown.

Q. This you found to be her condition on October 16th, 1934. When next did you see Mrs. Stoll?

A. The next day, the following day.

Q. What was her condition at that time?

A. Well, as we say, she had reacted from her tension and pressure of the evening before. She was relaxed but was completely exhausted. Her blood pressure had dropped to sub-normal level at that time, 102, and she was rather lethargic and inclined to want to be quiet.

Q. Now, with reference to the lump on her head, had that been absorbed at that time, or, if it had not been, how long did it take that lump to be absorbed?

A. It had not entirely been absorbed at the end of the week, but it had diminished in size by more than half and was less tender, and at the end of that week I left the city for a week or so and did not see her after that.

Q. Now, Doctor, do not answer this question until we get a ruling on it, if there is an exception made to it. In your opinion, could these wounds that you have testified about been caused by blows on her head by a blunt instrument?

600 Mr. Hogan: Objection.

The Court: Objection sustained.

Mr. Brown: You may ask him.

Mr. Hogan: Without waiving any objection or without prejudice to the right of this defendant to insist, as we have formerly insisted, that this type of evidence is incompetent, I would like to ask the witness some questions.

The Court: You do not waive your objection by cross-examining the witness.

Cross-examination by Mr. Hogan.

Q. Doctor, you spoke of an increased blood pressure. There are many things that will cause the pressure of

blood in a person to rise, are there not?

A. Not in a normal person.

Q. If you attend a horse race and have a bet on a horse, your pressure will rise considerably during that moment of tension while the race is being run, will it not?

A. Only if one were an inveterate gambler and risking great stakes or something to make great nervous tension.

Q. You do say that that will increase the pressure?

A. Nervous tension, anxiety.

Q. Excitement at a football game in a tense moment will increase the pressure, will it not?

A. Conceivably so.

601 Q. Likewise at a baseball game, it will increase the pressure, in the excitement, will it not?

A. I have.

Q. Have you ever attended a baseball game?

A. Yes, but I have never had my blood pressure taken.

Q. I am not asking you personally, I am asking you professionally, you qualified as an expert, if it is not true that any kind of excitement will have a tendency and does increase the pressure.

A. I think it has got to be more vital, more personal in anxiety, than observing sports and athletics.

Q. Haven't you at times known of cases where people have been known to drop dead at race tracks and ball games, from the excitement?

A. I have heard of such cases.

Q. That is caused by an increase in the pressure, is it not, Doctor?

A. Yes, but people have dropped dead in bed also, at least have been found dead in bed.

Q. But when they drop dead, either at a sports event or in bed, their pressure rises, does it not?

A. Not necessarily.

Q. But it does enter into the cause of death, does it not?

A. Not necessarily. There are many phenomena
602 that could do that.

Q. You mean that a person expires without any variation in the pressure?

A. Yes. Many of our deaths are from arteriosclerosis with final complete clogging of an arteriosclerotic vessel. Most of our sudden deaths are of that sort, which may occur in the vessels of the heart or of the brain.

Q. Let's confine our theory to cases of death caused from excitement of anxiety. Now, in those types of cases, is it not a fact that the pressure rises?

A. Yes, I believe so.

Mr. Hogan: That's all, Doctor.

Mr. Brown: Doctor, in line with the questions asked you by counsel for the defendant, what, in your opinion, would be the effect on the blood pressure of two blows on the head where you have a forcible removing from a home, absence in a strange place for a period of six days, where you had been held in a closet, tied to a chair, gagged, with adhesive placed on your mouth, slept tied to a bed, attached by a cord to a man that you had never seen before—in your opinion, would such a condition, if true, have a tendency to cause the blood pressure to rise or to fall?

Mr. Hogan: Just a minute, Doctor. Your Honor, please, that's objected to because the hypothesis is
603 based upon false premises.

The Court: Which one of those facts that have been assumed to be existing do you think has not been shown by the evidence?

Mr. Hogan: The hypothesis that she was all of the six days confined in a closet or tied to the bed.

The Court: Eliminate that. With that fact eliminated, Doctor.

Mr. Brown: Just placed there part of the time.

A. Yes, indeed. It is bound to affect both the blood pressure and the heart rate.

Mr. Brown: That's all.

Mr. Hogan: That's all, Doctor.

WILLIAM MARSHALL BULLITT called as a witness in behalf of the Government, was first duly sworn by the Clerk, examined and testified as follows:

Testimony of William Marshall Bullitt

Direct Examination by Mr. Brown.

Q. State your name to the jury.
A. William Marshall Bullitt.
Q. Where do you live, Mr. Bullitt?
A. Oxmoor, Route 6, Jefferson County.
Q. Here in the County of Jefferson, State of Kentucky?
A. Yes.

604 Q. Are you a practicing lawyer here in the City of Louisville?

A. Yes.

Q. On October 10th, 1934, did you receive a telephone call relating to the kidnapping of Mrs. Alice Stoll?

Mr. Hogan: That's objected to. That's a leading question.

The Court: The question is leading, but we will take an awful long time if we don't lead a little where it is not prejudicial. You think that is prejudicial to your client in any way?

Mr. Hogan: Yes.

The Court: All right, then, Mr. Brown.

Q. On October 10th, 1934, about the hour of 5:45 pm, did you receive a telephone call from anyone?

A. Yes.

Q. As a result of that telephone call, what actions did you take, Mr. Bullitt?

A. I telephoned to a man named Malley whom I had known for many years as the head of the Secret Service, of the counterfeiting part of the Government, of the Treasury Department, told him—

Mr. Hogan: That's objected to. That's hearsay.

Q. All right—as a result of information, did you communicate with any Department of Justice agents?

605 A. I did.

Q. After you had gotten in touch with the agents of the Department of Justice, what did you do, Mr. Bullitt?

A. I went from my office at the corner of Fourth and Market in my automobile, to the corner of Third—I said Market, it is really Jefferson, Fourth and Jefferson, Fifth and Jefferson—I went to the side entrance of the Tyler

Hotel on Third Street, and there three men, in accordance with the appointment I made, were there, a man named Wynn, a man named Kerr, and I have forgotten the third man's name, and they identified them as FBI. One of them got in my car, that was Wynn, two others followed in their own car, and I led the way and motored then out Main Street or Market Street, out the River Road, to the Lime Kiln Lane, turned in, I knew where the Stolls lived. I went to the gate that leads up that hill, and then I went through that gate and the other one followed me, and we went up to the Stoll house.

Q. After you reached the home of Mr. Berry Stoll, did you go into the house?

A. Yes, immediately.

Q. What portion of the house did you first visit, Mr. Bullitt?

A. Well, I think I stood there in a little bit of a hall for a minute or two, and then I went right up the little stairway that's right within a foot or two, two or
606 three feet, of the front door.

Q. When you reached the top of that stair, did you go into a bed room?

A. Well, there were two bedrooms there—three, in fact. I went into two of them right away.

Q. All right, with reference to the guest room, will you tell the jury what you found to be the condition and what you found in that guest room?

Mr. Hogan: That's objected to unless it is shown that there had been any disturbance of that guest room.

Mr. Brown: We, of course, can show that.

The Court: All right.

Mr. Hogan: Of course, if it isn't connected up, we will renew our objection.

The Court: All right.

Q. Go ahead, Mr. Bullitt. What did you find with reference to the condition of that guest room?

A. By the guest room, if you mean the room that is on the lefthand side when you get to the top of the stairway, which is really on the Northeast corner of the house—that's the room you are talking about. That room is a

moderately size room. There was a bed. I think it was a single bed. It wasn't a big double bed, I would say a single bed. It was covered with a pink coverlet, sort of like a quilt, pink. On it were two big blood stains.

607 One was about the size of a large plate. That was about three quarters of the way, I would say, down toward the foot of the bed. There was a big, very distinct, very different from the color of the pink coverlet, about as big as a big plate, and then there were splotches of blood around the edges, but that middle one was almost exactly round and equivalent to a pool of blood although I don't think it was wet in the sense of being a quarter of an inch thick or a tenth of an inch thick, but it was soaked down into it. Then about eight or nine inches away from that, further over on the side of the bed, was another one, about the size of a saucer. It was about that big, very much smaller, but about that big, as big as an ordinary teacup saucer, and that had the same kind of blood stain, and then there were scattered splotches out on the edges of it.

Q. After you had examined this room as you have testified to, did you return to the lower part of the house?

A. Not immediately. Not immediately.

Q. Some time thereafter did you return to the lower part of the house?

A. Oh, yes. Oh, yes.

Q. At that time, you, in company with other persons and certain agents of the Federal Bureau of Investigation and certain Louisville police officers, did you see a note of any kind?

608 Mr. Hogan: That's objected to. He is telling the witness what his testimony should be.

The Court: The question is leading.

Q. After you returned to the lower part of the house—

Mr. Hogan: I suggest that the witness be asked to tell what he did there.

Mr. Brown: I will ask my questions, if you object to them and the objection is sustained, I will ask another one.

Mr. Hogan: If they are leading, I'll guarantee you that I will object to them.

Q. Now Mr. Bullitt, after you returned to the lower

part of the house, was anything seen by you?

A. Yes.

Q. What, at that time, did you see?

A. I went into the room at the left of the entrance, which was apparently the dining room, and there was a table, a dining room table, it wasn't round, but it was rather rectangular or oval in shape, not very wide, but just an ordinary dining room table, and in that room, as I remember it, were two police officers in uniform, the city police, and there was one or two, maybe all three, of these F.B.I. men that came out there with me, that I took out, and there they were shown a typewritten sheet. Of

609 course, it has been nine years ago, but as I remember it, it was a typewritten sheet about the size of an ordinary typewritten letterhead or maybe a little longer, may have been the legal size, I don't remember, just a sheet, and I remember very well the police officer had it in his hand, it wasn't an FBI man. He held it in the corner like that, didn't want to get any fingers on it of anybody, and he held it up, and I read, not all of it, I remember that I looked at it and read it, it was in black typewriter with a lot of red typewriter letters scattered through it. It was part red and part black.

Q. I'll show you this document, and ask you to examine that and tell the—

A. (Interrupting) That's it. It was legal size. I couldn't remember whether it was letterhead or legal size. That looks like the exact paper exactly, and I remember the envelope. I forgot to mention that there was an envelope that looked just like that, and I did not read one part of it, I remember that.

Mr. Brown: I would like to have this marked for identification and we will introduce it through another witness. That consists of the envelope and the two typewritten documents.

(The document and envelope referred to were handed to the reporter and marked for identification Government Exhibit No. 33.)

610 Cross-examination by Mr. Hogan.

Q. Mr. Bullitt, who else besides the one, two or three FBI Agents and the two city police were in that residence on the occasion of your visit?

A. I think Mr. and Mrs. Speed, I know, were both there.

Q. Anybody else?

A. Just a minute—I am getting pretty old, you know.

Q. Did you see anybody else there?

A. Wait a minute, I want to be sure that I hear everything that you say.

Q. Well have you got your battery all charged up there now?

A. Yes. I am an old and broken man, and I want to be sure that I hear everything you say.

Q. Who else besides those you have mentioned and Mr. and Mrs. Speed were in that house?

A. Well, there was a girl—quite a small girl—a woman, I mean, who looked like she was 22 or 23 years old. She might have been 24, 25 or 26, I don't know. She was one of the servants.

Q. Was Mr. Berry Stoll there?

A. Yes, I think he was. I am not sure but I
611 think he was. That has been nine years ago—I think he was but I really don't know for sure whether he was or not. I have no photographic recollection of seeing him. I am not at all sure he was there, but I think he was.

Q. You did not read this paper and you don't know what was in it?

A. Yes, I read a little of it, but there was one part of it I did not read.

Q. You say one page of it, I believe you stated?

A. Well it was that paper that I have identified. As near as I can tell, that was the paper. It may have been written on both sides, but I have forgotten. I have not seen it from that day to this. I have not read any testimony about it; I know nothing at all about it except my recollection.

Q. Did you see one or two pages there?

A. I only saw one. The fellow held it up and all I saw was one page. So far as I knew it was only one page. He just held up a sheet like this and didn't want anybody to touch it. I think he may have laid it this way on the table, and I am near-sighted and I have to change my glasses when I read anything close, like reading, and so I just glanced at it and I know there was some part of it I did not read.

Q. But you are quite confident that you did not
612 see but one page?

A. No, I didn't say that. I said I read that part of the paper that was hung up, but there was one part I did not read.

Q. Well did they exhibit to you one page or was it two pages?

A. So far as I remember it was just that one sheet of paper. I didn't know there were two pages, and I didn't know—I don't know. They just held up something in front me, and whether I read the reverse side of it, I don't remember. I just read it, part of it, and part of it I did not read.

Mr. Hogan: That is all.

MRS. ANN WOOLET was called as a witness for the government after having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Mrs. Ann Woolet.

Q. Where do you live?

A. 326 North 33d street, Louisville Kentucky.

Q. In October 1934 where were you employed?

613 A. Mr. Berry V. Stoll's home.

Q. How long had you been employed there prior to that time?

A. About 2 years.

Q. And in what capacity were you employed?

A. As a maid.

Q. Where was your husband employed at that time?

A. Mr. Stoll's.

Q. Where was the Stoll residence?

A. On Lime Kiln Lane.

Q. Here near Louisville, Kentucky?

A. Yes.

Q. On October 10, 1934, were you working there at the Stoll residence?

A. I was.

Q. Were you there in the afternoon of October 10th?

A. I was.

Q. Was your husband there?

A. He was not. It was his day off.

Q. What day of the week was that?

A. Wednesday.

Q. Was that always his day off?

A. Yes. Very seldom we broke the rule.

Q. On the afternoon of October 10th was Mrs. 614 Stoll at home?

A. Yes.

Q. Was there anyone there working, other than yourself?

A. There was a negro man out on the place.

Q. Did anyone come to the front door of the Stoll residence in the afternoon of October 10th?

A. Yes.

Q. Did you answer the door?

A. I did.

Q. What conversation, if any, did you have with the person who knocked on that door?

A. He asked me—he came to look at the telephones—he was supposed to have been a telephone man—

Q. (Interrupting) How did you know that he was a telephone man?

A. Well he said he came to check our telephones.

Q. How many telephones were in that house?

A. Two.

Q. Had you had any trouble with those phones?

A. Yes.

Q. Had any telephone man been there?

A. Yes, either that day or the day before.

Q. Now when this person came to the front door do you recall what conversation you had?

615 A. Well he asked me—he repeated a telephone number and asked me if that was the number, I believe it was East 2941, and he wanted to know if that was the number and I said yes.

Q. Was the telephone number that he repeated the telephone number of the Stoll residence?

A. Yes.

Q. And after he said that, did you admit him?

A. I did.

Q. About what time of the afternoon was that?

A. About 3 o'clock.

Q. What did he do after he entered the Stoll residence?

A. He wanted to know if we had an extension, and I told him that we did; and then he wanted to know if I thought Mrs. Stoll would approve of the dial system and I told him I didn't know.

Q. The dial system?

A. Yes.

Q. Was there a telephone on the first floor of the Stoll residence?

A. Yes; just as you enter.

Q. Just inside the front door?

A. Yes.

616 Q. Where is that telephone with reference to the stairs leading upstairs?

A. The stairs are right there, too; to the right of the telephone.

Q. Tell the jury whether or not this man worked around, or fooled around the telephone box there?

A. Yes; he did.

Q. How long did he work there?

A. Several minutes.

Q. Did he or not engage you in further conversation?

A. Not right there. I went downstairs.

Q. To the basement?

A. Yes.

Q. How long were you gone, if you remember?

A. Just a few minutes.

Q. Later, did he engage you in conversation?

A. Yes, he did.

Q. With reference to what?

A. Well he wanted to know whom she married; he asked me if she was Mrs. Speed's daughter and who she married. And he wanted to know if it was Berry Stoll.

Q. Did you answer those questions?

A. Yes.

Q. Was there any conversation with reference to
617 to a possible telephone in the garage?

A. Yes.

Q. What was that conversation?

A. He wanted to know if there were any other telephones in any other buildings or if there was any other help, possibly a chauffeur or something like that.

Q. Did he ask about a chauffeur?

A. Yes, he did.

Q. What did you tell him?

A. I said we didn't have any.

Q. And did he ask you about any persons working on the farm?

A. Yes, he did. He wanted to be very sure if anyone else was there.

Q. What did you tell him with reference to persons working there?

A. I told him there was a colored man there.

Q. Did you tell him what time that colored man—did you or not tell him what time that colored man—

Mr. Hogan (Interrupting): I object to that because it is leading.

The Court: Objection sustained.

Q. Was there any conversation with reference to the time that colored man left the Stoll farm?

618 Mr. Hogan: Now that is just another way of course. The proper way to do is to ask what conversation took place.

The Court: Well of course that is the proper way. Of course she might get off talking about something else that

had no bearing on the case. I don't see how she could possibly prejudice your client, but if you insist on it we will go through the formula. Go ahead, Mr. Inman.

Q. I believe you stated that there was conversation about the colored man?

A. Yes.

The Court: Now what was that conversation?

Mr. Hogan: That is what I want—what was the conversation.

A. As to the time the man left.

Q. All right. What did he say, and what did you say?

A. I told him what time he left—about four o'clock was his regular habit of leaving.

Q. Did this man who was working on the telephone leave the house at any time?

A. Well he went out to the garage. He seemed to be checking the wires.

Q. Was he at any time in the basement of that house?

619 A. Yes. He looked at the box down there and inspected the telephone box.

Q. Now was there any conversation between you and that man concerning an extension on the second floor?

A. Yes; he wanted to know about the extension upstairs.

Q. What did you tell him?

A. I told him we had one up there.

Q. Was there any further conversation about that?

A. Well he wanted to see it and I went upstairs and asked Mrs. Stoll about this dial system that he wanted to know about and I told her that he also wanted to see the phone, and she went into another room.

Q. Where was Mrs. Stoll during this time?

A. Well she was in the front room where this phone was at the time I went up.

Q. Is that a front room? Is that upstairs?

A. Yes, front bed room.

Q. And the extension was in that same room?

A. Yes.

Q. What did Mrs. Stoll do or where did she go after

you went up and talked to her?

A. Well she went into the guest room.

Q. Where was the guest room with reference to the head of the stairs?

620 A. Just at the head of the stairs.

Q. To the right or to the left?

A. To the left.

Q. After Mrs. Stoll moved to the guest room, what did you do? Where did you go?

A. I went back to the basement.

Q. Was there any other request made of you by this man who was working on the telephone?

A. Yes.

Q. What was that?

A. Well I overheard him—he was supposed to have been talking over the telephone. He said "I have to have help but maybe I can get the maid." And then he asked me if I would go upstairs and do something to that telephone in the front bed room. And with that he walked to the telephone and was supposing to do something to it before I did.

Q. What room were you then in?

A. In the front bed room where the extension phone is.

Q. On the first or second floor?

A. On the second floor. And I was near the bed and all at once I saw him throw the screwdriver that he had on the bed and with that he put the gun to my back and told me to go into the room where Mrs. Stoll was.

Q. Well, did you go?

621 A. I certainly did.

Q. When you got to that guest room, was the door opened or closed?

A. That I don't know for a certainty—I don't remember that.

Q. Who led the way into the guest room?

A. I did; I was in front.

Q. And where was this man?

A. He was behind me with that gun right at my back.

Q. Had you ever seen that man before?

A. I had not.

Q. Have you ever seen him since?

A. Yes; I see him now.

Q. Where is he?

A. Right there (indicating).

Q. Which one?

A. In the middle—at the table in the middle.

The Court: That is the defendant in this case?

Witness: That's right.

Q. The defendant Thomas Robinson—

A. (Interrupting) Junior.

Q. After you entered the guest room, what happened, Mrs. Woolett?

A. Mrs. Stoll says, "'What are you here for?'' And he said, "I am here to kidnap you."

622 Q. Then what happened?

A. Well she proceed to—she wanted to give him a check or settle with him in some way so he would not take her away from the home. She wanted to settle the thing right here. And he began to—he made an attempt to tape her mouth.

Q. What did he do with the gun that he had?

A. While he was doing that he had this gun on the bed and she made a grab for the gun and then he struck her over the head and hit her.

Q. What part of the head did he strike then?

A. Over the—moreless the right.

Q. What did he strike her with?

A. A lead pipe—I suppose it was lead—it was a heavy pipe anyway. It was a pipe wrapped in paper.

Q. I will show you that pipe and ask you if you recognize that?

A. That is it—I certainly do.

Mr. Inman: I will ask that this pipe be offered in the record as Government Exhibit No. 34.

(At this point the above described pipe is handed to the Reporter, marked Government Exhibit No. 34 and filed.)

Q. Where was that pipe when you first saw it?

A. Well he got it from his pocket when he struck

623 her over the head.

(At this point Mr. Inman passes the pipe to the jury to examine.)

Q. Was Mrs. Stoll successful in getting the gun?

A. No, she was not.

Q. Why not?

A. Well he struck her over the head and it dazed her —made her feel very ill.

Q. Then after he struck her the first time—

Mr. Hogan (Interrupting): Now we are going to object to that, Your Honor. There has been testimony only that he struck her one time.

Q. Well, after he struck her that time what happened?

A. Then he commanded me to wire or tape her wrists.

Q. Did Mrs. Stoll give you any instructions at that time concerning another gun?

A. Yes, she did—she asked me to get her gun.

Q. Did you start after it?

A. No, I didn't.

Q. Then what did Mrs. Stoll do?

A. He hit her over the head again with that pipe and then she fell back on the bed—he hurt her pretty badly—I thought she was unconscious for a bit.

624 Q. Was that the second blow?

A. Yes, that was the second blow. It brought blood.

Q. Was there blood from that second blow?

A. There certainly was.

Q. Did she fall?

A. She did.

Q. Where did she fall?

A. Across the bed, on her back.

Q. On her back?

A. Yes.

Q. How long did she remain on that bed?

A. Just no time at all—he pulled her up.

Q. Then what happened?

A. Well then he wired me.

Q. Well with reference to Mrs. Stoll's wrists, what was done to them?

A. Oh he wired her wrists.

Mr. Hogan: Now Your Honor that is entirely suggestive and leading.

The Court: The witness has already said that the defendant had wired Mrs. Stoll's wrists. He is just referring back to the same point in the testimony.

Mr. Hogan: My objection is that he was leading the witness.

625 The Court: He is just directing her attention to the previous testimony which she gave.

Mr. Hogan: All right, Your Honor.

The Court: I don't think it is objectionable.

Q. With reference to Mrs. Stoll's wrists, what did you do?

A. I wired them.

Q. Why did you wire them?

A. He commanded me to do so.

Q. Where was Robinson at that time?

A. He was right in the front of both of us. He had the gun—I did this at the point of a gun.

Q. Where did you get the wire with which you wired her wrists?

A. He handed it to me—he had it in his pocket.

Q. Was there any adhesive tape there?

A. Yes.

Q. Where did that come from?

A. That came out of his pocket, too.

Q. How was Mrs. Stoll dressed at that time?

A. She was fully dressed except she had a kimono on.

Q. After you bound her wrists, was tape used in any way?

626 A. Yes.

Q. How was the tape used?

A. I did that at the point of a gun, too.

Q. What did you do?

A. I tried to get it around her wrists.

Q. Was anything done to Mrs. Stoll's mouth?

A. Well at the first of it he tried to tape her mouth.

Q. With what?

A. Tape.

Q. Adhesive tape?

A. Adhesive tape.

Q. What was done with you after you had tied Mrs. Stoll's hands?

A. Well he then wired my wrists together very tight, so tight that it cut my wrists, and then he shoved me to the floor and wired my ankles and I stayed there.

Q. Wired your ankles?

A. Yes.

Q. Then what happened.

A. Then he got her coat; and he also wanted to know what time Berry was coming and wanted to get away before Mr. Stoll got there, and he said if they did not get away he would kill Mr. Stoll.

Q. Did Mrs. Stoll leave that room?

627 A. Yes, they left together. After he got the coat they left together.

Q. What did he say to her?

A. I don't remember any statement.

Q. Did he give her any direction what to do?

Mr. Hogan: She just stated that she did not remember him making any statement—he can't put words in her mouth?

The Court: No, I think he can go a little further.

Q. Did he give her any direction?

A. No, he just said come with me. He did not need to give her any instructions of how to get out of the house because she knew that.

Q. Did he order her out of the house?

A. He just said, "Come with me."

Q. Did she put on any other clothing?

A. No. He got her coat for her in the same room.

Q. Did they leave the guest room?

A. Yes; I saw them leave and as he left he threw the ransom note on the bed and said, "You give this to Berry Stoll".

Q. Did you touch that ransom note?

A. I did not.

628 Q. Where were you at this time?

A. I was sitting on the floor.

Q. After that did you hear any noise of any automobile?

A. I heard the motor when they started—that's all I heard.

Q. Had you seen any automobile there at the house? Did you see Robinson come in in an automobile?

A. I didn't see him come but some time while he was there I noticed a black Ford sitting in the driveway.

Q. After you heard that motor of the automobile what did you do?

A. Well I tried to get untied.

Q. Were you successful in getting untied?

A. I finally got my ankles unwired.

Q. Were you able to untie your wrists?

A. Oh no.

Q. What did you do after you got your ankles untied?

A. Well I hardly knew what to do for a while. I studied. Then I went to the telephone and found that it had been disconnected.

Q. Did you leave the second floor of that house?

A. I did not. I went to the bath room and waited for Mr. Stoll. I could see him from that window.

629 Q. The window overlooks what?

A. The window overlooks the garage.

Q. About how long was it before Mr. Stoll arrived Mr. Berry Stoll?

A. Well it seemed like an awfully long time but I suppose about 10 or 15 minutes.

Q. Now with reference to that guest room what sort of cover did the bed have on it?

A. A peach spread.

Q. What was the condition of that bed after Mrs. Stoll was taken from her home that day?

A. Well it was bloody.

Q. Just describe that to the jury?

A. Well there were spots of blood on this spread that she lost.

Q. Did you see the blood flowing from her head?

A. Yes.

Q. After the blow which caused the flow of blood was

struck and after Robinson pulled Mrs. Stoll up from the bed, as you have testified about, did he have occasion to wipe his hands on any article?

A. Oh yes. He pulled a silk garment or something from the chest of drawers and wiped his hands.

Q. What did he have on his hands?

A. Blood.

630 Q. Now did you see Mr. Stoll when he entered the premises that evening?

A. Oh yes.

Q. Mr. Berry Stoll?

A. Yes, I was waiting for him.

Q. Had you at that time been able to untie your wrists?

A. Oh no.

Q. Who untied your wrists?

A. Mr. Stoll did. He came running up. I held my hands up and told him—

Q. (Interrupting) Not what you told him. Robinson had gone at that time?

A. Oh yes.

Q. So without relating any conversation that you had when Robinson was not there, I will ask you who unbound your wrists?

A. Mr. Stoll.

Q. With reference to the ransom note which was thrown on the bed in the guest room, what happened to that?

A. I believe it was just left there.

Q. Do you know whether or not Mr. Berry Stoll picked that up?

A. No, I don't.

631 Mr. Hogan: She has just said that it was left there.

The Court: Well apparently it was not left there indefinitely because it is here in court today.

Witness: We didn't disturb it is what I mean.

Q. Did you go with Mr. Stoll anywhere immediately?

A. Yes, we did—we went to a neighbor's to do some telephoning.

Q. Did he telephone?
A. Yes.
Q. Then where did you go?
A. We came directly home.
Q. To the Stoll residence?
A. That's right.
Q. Did you see Mrs. Stoll after that?
A. No, I did not.
Q. Did you leave the employ of the Stolls before she returned?
A. Yes; that night.

Cross-examination by Mr. Hogan.

Q. Mrs. Woolet, when you and the defendant, as you say, entered this guest room, what was the position of Mrs. Stoll in that room?
632 A. She was standing.
Q. Are you sure that she was standing?
A. Certainly.
Q. Wasn't she sitting in a chair?
A. She was not.
Q. Did she look at him before she spoke the words you have indicated?
A. Well certainly, when anybody walks in front of you, you look at them.
Q. Did she smile at him?
A. She did not.
Q. Are you sure about that?
A. I am.
Q. What did she say to him?
A. She says, "What are you here for"?
Q. And what did he say?
A. He says, "I am here to kidnap you."
Q. Did she talk much on this occasion?
A. No, she just—as you heard me tell the man, she offered him a check or some means of satisfying him that she would be left alone.
Q. He had not asked her for any money, had he?
A. No.
Q. He had not indicated that he wanted any money

633 at all, had he?

No.

Q. And when he said "I am here to kidnap you", he did not say "I am here to kidnap you and hold you for money", did he?

A. He said, "'I am here to kidnap you."

Q. That is all he said?

A. That is all he said.

Q. Did she change her position in the room?

A. No, she was right in front of that bed at all times.

Q. Now, to refresh your recollection, wasn't she sitting in a chair when you and he first went into that room?

A. She was not.

Q. And didn't she get up from the chair and go and sit on the bed?

A. Why no. She was not in the chair.

Q. And didn't she sit on the bed and just look as if she were thinking?

A. No, she didn't look as if she were thinking, but she was sitting on the bed.

Q. Other than offering him a check, what else did she say to him?

A. Well I cannot remember that she said anything right at that time.

634 Q. Did she ever say, "You can't get away with this, you are not a professional, you are an amateur and I am Will Speed's daughter?"

A. I can't remember it.

Q. Well will you say that she did not say those words or words to that effect?

A. I will say she did not.

Q. How long were you gone with Mr. Berry Stoll from that home to the neighbor's house?

A. Just a very short while, long enough to do some phoning.

Q. Where is this neighbor's house located?

A. Down the drive and just across the road—very close.

Q. What is your judgment about the lapse of time you were away from the house?

A. Well time was a funny thing then, but I would say 15 minutes.

Q. Was anybody in the house then when you and Mr. Stoll left?

A. Not a soul.

Q. Now what was done with you after you and Mr. Berry Stoll went to the neighbor's house and placed this phone call?

635 A. There was not anything done with me. I stayed right there at the home.

Q. To whom did Mr. Berry Stoll phone?

A. The family and the police and the federal men. Just everyone that he should.

Q. And then you were brought back or came back with Mr. Berry Stoll to the Stoll house?

A. That is right.

Q. Were you at any time questioned by the authorities?

A. Certainly.

Q. Were you questioned there at the house?

A. Surely.

Q. Were you taken anywhere else and questioned?

A. Yes.

Q. Where?

A. This building.

Q. You were questioned by the FBI?

A. Certainly.

Q. And by the city detectives?

A. Yes.

Q. And by who else?

A. That's all of importance, I suppose.

Q. Well, by anybody else?

A. No.

636 Q. Did Mrs. Will Speed, the mother of Mrs. Alice Stoll, go out to the Stoll home on Lime Kiln Road.

A. Yes.

Q. Did she object to your making any statements to the authorities?

A. She did not say whether she did or not.

Q. Well now didn't she oppose your making any statements to the authorities?

Mr. Inman: We object to that.

The Court: Objection overruled.

Mr. Hogan: Will the Reporter read the question?

(The question last above written was read.)

A. Not that I remember.

Q. Well you would remember it if she did?

A. I think I would remember, yes I do.

Q. Didn't she at one time on one occasion push you from the room when the authorities were questioning you and tell you that she would take over that situation, and for you not to make any statements about anybody?

A. I don't recall it.

Q. If it had happened, wouldn't you recall it?

A. I feel sure I would.

Q. How long did you stay at the Stoll home?

A. Well, just a few days after Mrs. Stoll was returned.

637 Q. You stayed in the home during Mrs. Stoll's absence?

A. That is right.

Q. Were you there when she did return?

A. Not that night.

Q. Where were you on that occasion?

A. At Mr. Speed's home.

Q. Who took you to Mrs. Speed's home?

A. Mr. Tarrant.

Q. What reason was assigned for taking you from the Stoll home?

A. That I don't know.

Q. How long did you stay at the Speed home?

A. Just that one night.

Q. I will ask you this question, Mrs. Woolet, when this man you have described entered the room on which Mrs. Stoll was then in, did she appear nervous?

A. Well no, not exactly. She seemed very calm.

Q. What was your answer?

A. She was very calm.

Q. Very calm. Did she give you the impression that she

had known this man at some time before?

A. She did not.

Q. Did she act like she had known him or seen him before?

638 A. She did not.

Q. His presence there did not seem to excite her then?

A. Well not just when he entered.

Q. That is the time I am referring to—when he entered.

A. That's right.

Q. Was she very calm and talked a whole lot didn't she?

A. Well she discussed the money—paying him a check.

Q. Did she write out a check or just offer to?

A. She didn't—she just offered to.

Q. Did all of this upset you? All of this business?

A. Certainly.

Q. It made you quite nervous, I take it?

A. Surely.

Q. When you were at the Speed home, were you in an excited condition or normal—calm?

A. I was excited.

Q. Did you object to staying at the Speed home?

A. Well I had rather not have been there. I had rather gone some place else.

Q. Did you make known your objections?

639 A. Well I told her we had people in Louisville and that I could stay there—that's all.

Q. What was her answer to that?

A. She had rather I stay there.

Q. Well didn't she insist that you stay there?

A. Well—yes.

Q. Now that was the night that Mrs. Stoll was returned to Louisville?

A. That is right.

Q. That was October 16, 1934?

A. Well I don't know the exact date.

Q. Well it was the day she returned after that seven

days' absence?

A. Yes.

Q. Now did you at any time come back to the Stoll home?

A. I went back the next morning.

Q. How did you go back to the Stoll home?

A. In a cab.

Q. Who ordered the cab for you?

A. I believe Mrs. Speed did—anyhow, somebody on the place.

Q. Did you get hysterical while you were at the Speed home?

A. I think I was hysterical all of the time.

640 Q. Well, with reference to the time you spent at the Speed home, were you hysterical?

A. Yes.

Q. Was your husband there with you?

A. Yes.

Q. Did he object to your being kept at the Speed home?

A. Well it would be much nicer with his own people here.

Q. Did he object?

A. Yes.

Q. And Mrs. Speed would not let either you or your husband leave there?

A. Well she said we should stay there.

Q. Did you ask Mr. Tarrant if he would take you to your husband's people's place and didn't he object on the ground that newspaper men might get to you and that you would talk?

A. I don't remember his asking that.

Q. Well, your husband?

A. I don't know what my husband said.

Q. When you got back to the Stoll home the next day—I mean the next day after being at the Speed home that night, what did you do at the Stoll home?

641 A. I was in bed.

Q. Highly nervous?

A. Yes.

Q. Did you require a physician?

A. Yes, we had one.

Q. Who attended you?

A. Well I can't recall his name.

Q. Well, who obtained a physician?

A. Mr. Stoll saw that I had a physician, but I just cannot recall the man's name.

Q. Well did he get a physician Mr. Stoll knew, or did he get your own physician?

A. One that he knew.

Q. Or did your husband get a physician?

A. I don't know. I was taken care of—I know Mr. Stoll was willing—it was discussed. Who actually called him I don't know.

Q. Was it not Dr. Shacklett of Jeffersontown?

A. Yes.

Q. And your husband had been raised in Jeffersontown?

A. Yes.

Q. So it was a doctor of your husband's choice, wasn't it?

A. Well he must have suggested that to Mr. Stoll
642 and I did not hear the conversation.

Q. Well what was the purpose of taking you back to the Stoll residence after having spent the night at the Speed home?

A. Well, why should I stay at Mrs. Speed's house?

Q. I am asking you, lady?

A. I was employed at Mrs. Stoll's.

Q. Well was it for the purpose of arranging the house?

A. I don't know.

Q. Well, did you clean up the house when you went back there?

A. No, I did not do any cleaning—I felt too bad.

Q. Did you see Mrs. Stoll when you got back there?

A. No.

Q. Well, was she there?

A. Yes; she was there.

Q. Well, did you see her?

A. I did not see her.

Q. Now are you sure about that?

A. I saw her out on the lawn but I did not see her in the house. I was not close to the woman.

Q. How close were you to her?

A. Well I am not a very good judge of distance.
643 I would say 200 or 300 yards.

Q. I will ask you if it isn't true that she put her arms around you and kissed you?

A. Oh for goodness sakes, no.

Q. You are sure about that?

A. Yes.

Q. You did not make that statement to anybody?

A. Positively not.

Q. You are sure about that?

A. Absolutely.

Q. Did you move any furniture or arrange the furniture in the Stoll home upon your return back from the Speed home?

A. I don't remember. I went to bed. I don't remember doing anything when I got back.

Q. What put you to bed?

A. I was just very nervous and upset.

Q. Did you find any money in a chair in the Stoll home?

A. I can't remember of any.

Q. Or, rather, I will ask you if it isn't true if you were not engaged in cleaning the house and raised a pillow on a chair and behind that chair you found a large sum of money?

A. I can't remember that. I can't even remember
644 doing any work at all when I got back.

Q. Did you ever tell anybody you found a large sum of money behind a pillow in a chair after your return to the Stoll home and after the return of Mrs. Alice Stoll to her own home?

A. I don't remember.

Q. Do I understand you to say that you do not remember either finding the money, a large sum of money, and do I also understand you to say you do not remember

telling anybody that you found any money?

A. I do not remember.

Q. You do not remember either of those incidents?

A. I do not remember.

Q. I will ask you if it isn't true that when you found this large sum of money that that frightened you tremendously?

A. I do not remember finding any money.

Q. And if that is not what put you to bed?

A. I do not remember finding any money. In fact, I don't remember even being upstairs.

Q. Or being downstairs or any place in the house?

A. No.

Q. That bundle of money, or package of money has no significance to you, and you do not remember any-

645 thing at all about it?

A. I do not.

Q. Well has there been any impairment of your memory since this occurrence?

A. Any what?

Q. Are you forgetful?

A. Well this has been a long time.

Q. Well you would not forget such an incident as finding a large sum of money, would you?

A. I hardly think so.

Q. Now you went back to the Stoll home on Lime Kiln Road on Wednesday October 17, 1934, didn't you? That is the day after the night that Mrs. Stoll came back home. Is that right?

A. The next morning after she was returned that night; yes.

Q. Now how long did you stay at the Stoll home?

A. The next morning after she was returned that night was when we went back; and then I think we left the following Sunday.

Q. Well, what caused you to leave?

A. Well their intentions were of closing the home up, and of course our services would not be needed any more.

646 Q. Now were you in bed from the time you got

back to the Stoll home until the Sunday you left?

A. Yes.

Q. I believe you testified before the Grand Jury in this case?

A. I don't remember.

Q. You do not remember testifying before the Grand Jury?

A. I can't get that clear in my mind. I have been in front of so many people.

Q. Well now, do you have difficulty in remembering, or you just don't want to remember?

A. Well it seems to have stunned my mind. I don't remember a lot of things. Just the mere facts that were impressed upon me that I will never forget them as long as I live.

Q. Now, to refresh your recollection, I will ask you if you did not go to this building on the Saturday following the return of Mrs. Stoll and testify before the Grand Jury?

A. I just don't know. I was up here a lot of times.

Q. Well you would remember if you were taken before a group of 12 persons like the jury in that box, wouldn't you?

647 A. I just—

Mr. Inman (Interrupting): I object to that. The Grand Jury does not look like the petit jury.

Mr. Hogan: Well it consists of 12 persons.

Mr. Inman: No, it does not consist of 12 persons.

The Court: The Grand Jury is usually more than 12 people and it does not sit here in the court room. I think you can reframe your question a little differently, Mr. Hogan.

Mr. Hogan: All right.

Q. I will ask it this way—weren't you taken before a Grand Jury, and that Grand Jury was in this building, before a group consisting of 12 persons—

The Court (Interrupting): No, a Grand Jury consists of not less than 16 persons.

Q. (Continuing) Before a Grand Jury consisting of 16 persons, and gave evidence before that body?

A. I just don't recall that.

Q. I will ask you if your husband didn't object to your being brought to testify before the Grand Jury and if Mr. Berry Stoll, your employer, was insisting upon your coming and to the point where he said he would get an ambulance, if necessary, to bring you here?

648 A. Yes; but I don't remember what the occasion was, because I was feeling so bad. I don't remember that occasion. I remember he said that.

Q. Do you remember now that your husband was objecting to your being brought here?

A. Yes; I remember that.

Q. And that was about 2 or 3 days after Mrs. Stoll returned?

A. That I don't know.

Q. And then you were brought down to this building?

A. Several times.

Q. Well did you tell anybody when you came here what you knew about the case?

A. Yes.

Q. When did you leave the—I will ask you this: Isn't it true that after the Sunday following the day you were brought down to the building here on Saturday, that you and your husband were discharged from the Berry Stoll employment?

A. Well we were on a Sunday, but whether or not we were down here on a Saturday, I don't remember. I might have been down here every day in the week because I have been down here so many times.

649 Q. But you were fired on the Sunday following her return?

A. I am almost positive it was on Sunday.

The Court: Well now he said you were discharged—did the employment cease?

Witness: Well they said they were going to close up the house—

The Court (Interrupting): You said you left. He said discharged.

Mr. Hogan: She answered that she said she was discharged.

The Court: No, she said she left.

Mr. Hogan: Now, if Your Honor please, I would like to have that read back—

The Court (Interrupting): Well what I want to know, regardless of what you said, is whether or not you were discharged or whether you left their employment or your employment ceased. How did it happen that your employment terminated?

Witness: He said he was going to close his home up and that our services would not be needed any more. You can take from that what you want to.

The Court: If those are the facts, that is what we are after.

Witness: Yes.

650 Q. Then you and your husband were out of a job for some time?

A. Yes.

Q. Did your husband try to get Mr. Stoll to get other employment for you?

A. Yes, but they did not seem to need our services at that time.

Q. Didn't Mr. Berry Stoll suggest that your husband go to Owensboro and consult a man and get a job down there?

A. Yes; I believe he did.

Q. And that was not successful, was it?

A. No.

Q. How long was your husband out of a job?

A. He really did not have a job for a year that you would call a job.

Q. Well did your husband after that re-enter the employment of Berry Stoll and Mrs. Alice Stoll?

A. Not in their home.

Q. Well, at any place?

A. Yes; out in the State.

Q. Where?

A. Hardyville.

Q. When was that?

A. I think it was about a year after the crime.

651 Q. Did your husband re-enter that service before

you testified in this case in October 1935 when this boy's then wife and father were on trial?

A. We were employed after that.

Q. Are you sure of that?

A. Yes, because I don't remember leaving town to come up here.

Q. You are sure about that?

A. Yes; I am positive.

Q. How long after you testified in October 1935 in this very court room when Frances Robinson and Thomas Henry Robinson Sr. were on trial, did your husband re-enter the employment of Berry Stoll or the Stoll Oil Refining Company?

A. May I ask when this trial was? I have forgotten exactly?

Q. It was in October 1935. Now with that date, will you proceed to answer the previous question?

A. Yes. We were employed that same fall after the trial.

Q. The same month?

A. I think we went down there in November. I am almost positive we went down there in November.

Q. Within a month then from the time of that **652** other trial?

A. Yes.

Q. Were you given any re-employment by the Stolls?

A. No.

Q. Did you ever make any claim, or did your husband ever make any claim, against Berry V. Stoll or Mrs. Alice Stoll?

A. No.

Q. Did you ever consult an attorney about presenting a claim against them or did your husband?

A. I didn't.

Q. Are you sure about that?

A. I didn't.

Q. Did the Stolls ever pay you any money on any claim, or pay your husband any money on any claim?

A. No.

Q. Did you make any arrangements, or did your hus-

band make any arrangement, either one of you, that you would be given employment after your testimony in this court in October 1935?

A. I—

The Court (Interrupting): Now shouldn't this witness testify about what she herself knows? Only her husband would know what he did.

653 Mr. Hogan: She might know what he did.

The Court: She wouldn't know except by hearsay, would she?

Mr. Hogan: If she was present.

The Court: Well, of course, if she was present. But I mean barring that—what happened to them separately and individually, let her speak for herself; and what happened to them jointly, she can tell if she was present.

Mr. Hogan: All right.

Q. With reference to yourself, did you make any arrangements with Berry Stoll or Alice Stoll that you would be given employment, or re-employment, after your testimony here in October 1935?

A. No.

Q. Now, with reference to your husband, do you know of your own knowledge, not from hearsay, whether he made any arrangements with Mr. Berry Stoll to re-enter the Stoll employment after your testimony in this court in October 1935?

A. No.

Q. Did I understand you to say a moment ago that you never consulted any attorney about presenting a claim against either Mrs. Alice Stoll or Mr. Berry Stoll?

A. No.

Q. Well did you at any time, regardless of

654 whether you consulted an attorney, feel aggrieved or that you had been damaged or should be paid as a result of your participation in this whole affair?

A. Well I certainly did not gain anything out of it.

Q. Well the question is, did you feel that you should gain anything out of it?

A. No.

Q. I will ask you if it is not true that you went to

the office of Mr. Joseph Hayse, an attorney in this City, together with your husband, Fowler Woolet, and didn't you consult him about presenting a claim against Mr. Berry Stoll and Mrs. Alice Stoll?

A. I do not remember it.

Q. Well do you say that you did not do that?

A. I do not remember it. I feel that I would remember it.

Q. Did your husband do that?

A. I don't know.

Q. Did you consult any other attorney in Louisville or elsewhere with reference to making a claim against either one of those Stolls that I have just indicated to you?

A. Not that I remember.

Q. Well, would you remember it if you had done that, wouldn't you?

655 A. I think so.

Q. You would remember going to an attorney's office in a matter of that importance?

A. Yes.

Q. And you don't remember that?

A. No.

The Court: Now you have said that three or four times. Let's go to something else.

The Court: Now, Members of the Jury we will take the mid-morning intermission at this time. Do not discuss this case among yourselves or with anyone or permit anybody to discuss it in your presence.

656 After a short recess, the hearing was resumed, as follows:

The Court: All right, Mr. Hogan.

Q. Now, Mrs. Woolet, I will ask you if on or about September 9th, 1935, you did not make these statements.

The Court: Where, Mr. Hogan.

Mr. Hogan: To Mr. Joseph Hayse, in his office, at which time his wife, Mrs. Nellie Stoess Hayse, was present.

Mr. Brown: I am certainly going to object to that if he was acting as attorney and client.

Mr. Hogan: He cannot object because she said she never went to an attorney and presented the matter. That don't

mean that he can't object, but she said—

The Court: I think he can ask her the questions and lay the basis for any possible rebuttal that may exist. We are not interested in the truth of the statements at this time.

Q. "Before this time she (meaning Mrs. Stoll) calls me up there (meaning the room where she was) and wants me to bring her some pumkin seed, and I took them up there, and Robinson comes up and smiles at her. I thought it was just politeness then." Did you make that statement?

A. I don't remember.

The Court: What is the date?

Mr. Hogan: September 9th, 1935.

657 The Court: And where?

Mr. Hogan: Here in Louisville, Kentucky.

The Court: Whereabouts in Louisville, Kentucky?

Mr. Hogan: In the office of Mr. Hayse.

Q. "She didn't look at him mean or anything but just looked at him." Did you make that statement?

A. I don't remember.

Q. "I suppose you would call it a faint smile, but didn't crack her face." Did you make that statement?

A. I don't remember.

Q. "She didn't seem frightened or frantic and was very calm." Did you make that statement?

A. I don't remember.

Q. "She must have known him before as she didn't appear frightened and did so much talking and kept her nerve and she asked him what he was going to do there. I don't remember the exact words." Did you make that statement?

A. I don't remember.

Q. "I don't believe she made any reply to that right at that time (meaning or referring to when he said 'I am here to kidnap you'). I think she just sort of sat and looked at him sort of like she was thinking." Did you make that statement?

A. I don't remember it.

Q. "She didn't seem to be particularly excited or
658 disturbed about it." Did you make that statement?

A. I don't remember it.

Q. "I don't know who said it, but I know she wanted to offer him a check and he wouldn't have that of course." Did you make that statement?

A. I don't remember it.

Q. "While she is sitting there in a rocking chair"—did you make that statement?

A. I don't remember it.

Q. "He is very nervous, he is afraid Berry Stoll is coming in there before he gets away. She seems to be in a hurry, I guess you call it, and he wants to hurry up and get away, get her all wrapped up before Berry comes home." Did you make that statement?

A. I do not remember it.

Q. "And she said, 'Hurry or let's go', or something to the effect, showing that she was willing to go." Did you make that statement?

A. I don't remember it.

Q. "They told us Tuesday afternoon that she is coming home that night." Did you make that statement?

A. I don't remember it.

Q. "Mr. John Tarrant, lawyer for the Stolls, Mr. Stoll came down and told me that they wanted the house cleared out and everybody away, and John Tarrant took us
659 to W. S. Speed's over on Lexington Road." Did you make that statement?

A. I don't remember it.

Q. "Mrs. Speed entered the door and took us up to the servants quarters and put us in a very cool room, a cold room." Did you make that statement?

A. I don't remember it.

Q. "Just had a little bed and a dresser in there and I thought I was in jail for sure it was so bleak looking." Did you make that statement?

A. I don't remember it.

Q. "It was in the early evening about 5:00 or 6:00 o'clock." Did you make that statement?

A. I don't remember it.

Q. "We didn't want to stay there. I just couldn't stand it, and I felt that I wanted to see my mother so bad, so I cried and took on pretty bad, and we wanted to leave and

Mrs. Speed wouldn't let us leave. She said, 'There have been orders for you to stay here,' and she had our supper sent up to us. Then along about 8:00 o'clock Mrs. Speed comes up and tells us, "Alice has been returned,' and she didn't act very thrilled, just calm." Did you make that statement?

A. I don't remember it.

Q. "They had told us in the afternoon that she
660 was going to be returned, that is why we had to leave the house." Did you make that statement?

A. I don't remember it.

Q. "After that we went to bed and we spent the night there, and the next morning early, I should say around 7:00 o'clock, she (meaning Mrs. Speed) ordered a taxi for us and we get in this taxi and go back to Berry Stoll's." Did you make that statement?

A. I don't remember it.

Q. "Mrs. Speed asked me—I was downstairs in my bed room—and she asked me to go up there and clean up Mrs. Stoli's room as there were no women in the house." Did you make that statement?

A. I don't remember it.

Q. "That was on Wednesday." Did you make that statement?

A. I don't remember it.

Q. "So I went up to clean her bed room and see her, listen, I went to see her, though before I went up to clean, just as soon as I got back to the house, she put her arms around me (meaning Mrs. Stoll) and kissed me, and this just shocked me to death because she is sort of cold natured, and while cleaning her room, dusting, I raised the pillow up on a lounging chair and I found a pile of money there, and it frightened me so I just dropped the pillow and I
661 don't know whether anybody knows I saw it or not, and when I got through I went back to bed. That just made a cold chill run over me when I saw that money." Did you make that statement?

A. I did not.

Q. "From then on I didn't do anything. I was just up and down in bed most of the time and then it was in this

time that the doctor came to see me." Did you make that statement?

A. I don't remember it.

Q. "After that I was just in bed most of the time." Did you make that statement?

A. I don't remember it.

Q. "There never was anything said to me about the money." Did you make that statement?

A. I don't remember it.

Q. "It wasn't fastened together, it was just sort of in a nice bulk." Did you make that statement?

A. I don't remember.

Q. "It might have had a rubber band around it, I don't know." Did you make that statement?

A. I don't remember.

Q. "It was in currency." Did you make that statement?

A. I don't remember it.

662 Q. "After I cleaned up the room I went back to bed." Did you make that statement?

A. I don't remember it.

Q. "We stayed at the Stolls then until Sunday morning." Did you make that statement?

A. I don't remember it.

Q. "Then Stoll came down and told us he didn't need us any more. It was not told in my presence but I heard it outside my room." Did you make that statement?

A. I don't remember it.

Q. "I heard him tell Fowler simply that he wouldn't need us any more, that he was going to close up the place and he didn't want to see it any more." Did you make that statement?

A. I don't remember it.

Q. "He said he might open it in the spring, and Fowler (meaning your husband)"—that is your husband's name, is it not?

A. That's right.

Q. (Continuing) "asked him if he would need him then, and he said he just didn't ever want to see the place again, he was going to close it up, but he didn't close the place up

at all." Did you make that statement?

A. I don't remember it.

Q. "I heard Fowler tell him that I was sick, I
663 couldn't be moved, and he said, 'The sooner the better'." Did you make that statement?

A. I don't remember it.

Q. "He didn't give any reason why he had to leave except he didn't want to see the place any more, Mrs. Stoll couldn't stand to see me." Did you make that statement?

A. I don't remember it.

Q. "He said that we would all be better off." Did you make that statement?

A. I don't remember it.

Q. "We just got ready and left, and before we left Mrs. Woolet, Fowler's mother, Agnes Woolet, asked him for a written statement that 'these children were free of all suspicion', and he said he would be glad to but he had to get permission from the authority or something before he could do it, and he never did do it." Did you make that statement?

A. I don't remember it.

Q. "I told him that I would like to see Mrs. Stoll before I left, and he came down and told me that I couldn't see her, that she was resting and was not feeling well." Did you make that statement?

A. I don't remember it.

Q. "She never did seem frightened through it all (referring to Mrs. Stoll.)" Did you make that statement?

664 A. No.

Q. "They haven't said a word to us since." Did you make that statement?

A. No.

Q. "They paid us up until we left, but didn't give us any notice." Did you make that statement?

A. I don't remember it.

Q. "Fowler asked him if he couldn't put him on at the factory or help him get work, and he gave him the names of two or three men in the oil fields in Owensboro, and he went all around to these places and he couldn't get a job, and we have not seen or had a word from him since." Did

you make that statement?

A. I don't remember it.

Q. Did you ever consult any other attorney than Mr. Hayse about this matter?

A. I have never consulted any.

Q. I will ask you if it isn't true that you went to see Mr. Dudley Inman, the man sitting at this table, but who at that time was not Assistant District Attorney, about presenting a claim against the Stolls?

A. I don't remember it.

Q. Well, you would remember that, wouldn't you?

A. I would think so.

Q. I will ask you if it isn't true that following
665 the time you saw Mr. Inman and consulted him about this, that you testified in this court in October, 1935, and that your husband was given a job, as you say, back with the Stolls in November, 1935.

A. Would you repeat that? I didn't follow the first of it.

Mr. Hogan: Would you read the question?

The Court: She has already testified that her husband was given the job, I think, in November, 1935. Is there anything else you want to bring out?

Mr. Hogan: The question is predicated with that part of it in it.

The Court: She has testified to that once. Let's don't make a double barreled question.

Mr. Hogan: All right, we will separate it. Withdraw that question.

Q. I will ask you if it isn't true that after you and your husband went to Mr. Inman, who was then in private practice, and presented your facts to him and advised him that you and your husband thought you had a claim against the Stolls for damages, or otherwise, that you didn't testify in this court in October, 1935, against Thomas Henry Robinson, Sr. and Frances Robinson.

A. I have never talked to Mr. Inman.

Q. You deny that that happened?

666 A. I do.

The Court: She is denying that she talked to Mr. Inman.

Mr. Hogan: All right, you may take her.
Mr. Brown: That's all.

MRS. DOUGLAS POTTER called as a witness for the Government, being first duly sworn by the Clerk, was examined and testified as follows:

Q. State your name to the jury.
A. Mrs. Douglas Potter.
Q. You live here in the City of Louisville, Mrs. Potter?
A. Yes, I do.
Q. During the year 1934 you were unmarried, I believe.
A. Yes, I was.
Q. What was your maiden name?
A. Elizabeth McHenry.
Q. How long have you known Mrs. Alice Stoll?
A. I have known Mrs. Stoll since childhood, about five years old.
Q. You were a close personal friend of Mrs. Stoll's?
A. Yes, I was.

667 Q. On or about October 10th, 1934, did you have occasion to go to the Lime Kiln home residence of Mrs. Stoll, the day of the kidnapping?
A. Yes, I did. I was out there that night.
Q. About what time did you get there, Mrs. Potter?
A. I got there about 7:00 o'clock.
Q. At that time did you go upstairs?
A. Yes, I did.
Q. What portion of the upstairs were you in, Mrs. Potter?
A. Well, I was in the hall, and I looked in the guest room, the room on the left, and then I walked over a few steps to the bed room and looked in there. Then I went back downstairs.
Q. With reference to the guest room, I will direct your attention particularly to that, would you tell the jury the condition of the guest room and what you saw there?
A. Well, I noticed on the bed there was a large blood stain, about—Oh, I would say about that big, round, on the

bottom—toward the bottom of the bed on the far side, and also some blood up toward the top, the head of the bed, and I just looked and passed on to the next room. I didn't go in the room.

Q. Now then, some days thereafter, and I will direct your attention to Sunday afternoon, October 14th, 1934, at that time, in the afternoon of Sunday, did you

668 receive a telephone call?

A. Yes, I did.

Q. Just relate to the jury what happened then and the substance of any conversation that you may have had.

A. It was Sunday, about 2:00 o'clock, the telephone rang and I did not answer it, someone of my family answered it, and the long distance operator asked to speak to me, Elizabeth McHenry my name was then, and the operator said, "It is a collect call. Henry Sanders is calling." So—

Mr. Hogan: That's hearsay and objectionable, Your Honor.

The Court: Objection sustained.

Q. Don't tell what the operator said. Did you go to the telephone?

A. Yes, I did, but the operator said—

Q. Let's not tell what the operator said. You went to the telephone and talked to some man on the telephone?

A. Yes, I did.

Q. Just tell the substance of that conversation.

A. This man's voice said—

Mr. Hogan: Now that's objected to unless she can identify the man.

Mr. Brown: I think it has been identified, by letters and by Mrs. Stoll.

669 The Court: Objection sustained.

Q. Now, without relating any conversation, sometime after that conversation—I'll hand you a letter and ask you to examine that letter and tell the jury if you received that letter.

A. This is the letter I received. I recognize the handwriting and the contents of the letter.

Q. Who wrote that letter?

The Court: Has that been identified?

Mr. Brown: Yes, it is Government Exhibit 30, I think.

A. I recognize it as Mrs. Stoll's handwriting.

Mr. Brown: I can't recall whether this has been read. I will read it:

"Sunday October 14

Dear Seat:

The phone call to you was O.K. I asked the kidnapper to go somewhere and call you. He said he drove to Indianapolis to do so. He and I believe that Berry delivered the money to Mr. T. H. Robinson, the intermediary, in good faith. However, the kidnapper knows that the police are watching the intermediary. The kidnapper now wants the intermediary to deliver the money to Mrs. Francis Robinson, his daughter-in-law.
670 She will, or already has, received instructions. This is the only person from whom and the only way by which the kidnapper will agree to accept the money. This is final.

Don't attempt to try to call the person who called you or trace it in any way. The person who called is a friend of the kidnapper's and will receive the money. Therefore, instruct all my family to be sure that this daughter-in-law is not followed or interfered with in any way.

If these instructions are followed I will be released unharmed within twenty-four hours. Otherwise, I am sure they will carry out their threat.

Get my family to use all their influence to withdraw the law from this case until I am returned. This is imperative.

Love from
A Seat"

Q. Now, Mrs. Potter, after this letter was received by you, did you turn this letter over to the authorities?

A. I did immediately.

Q. Now, the following Monday, the day after, I will direct your attention to the evening and I will ask you if

you received any other telephone call.

A. Yes, I did.

671 Q. Now, did you talk to the person who was calling?

A. Yes, I did.

Q. Now, with reference to the person that called on Sunday and the person that called on Monday evening, are you able to tell the jury whether or not the same person was talking?

A. Yes, it was the same voice, and the opening words—

Mr. Hogan: Wait a minute—

Mr. Brown: Don't tell any conversation.

The Court: Never mind what was said.

Q. Now then, on the next afternoon, on Tuesday, did you have another telephone conversation?

A. Yes, I did.

Q. With whom was that conversation? Did you recognize the voice?

A. With Mrs. Stoll.

Q. Did you communicate the information that you received then to any person?

A. I communicated it immediately to her family.

Q. On that same day that you received the telephone conversation from Mrs. Stoll, was Mrs. Stoll returned home?

A. Yes, she was.

Q. Did you see Mrs. Stoll shortly thereafter, and, if so, when did you see her?

672 A. I saw her either the next day or the day after, about—I think perhaps the day after, either that or the next day.

Q. Now, Mrs. Potter, would you describe Mrs. Stoll's appearance to the jury, when you saw her after her return home?

A. Well, she was in a highly nervous state, she had a bump on her forehead—

Mr. Hogan: Of course, the same objection, if Your Honor please, on the same ground as heretofore.

The Court: Objection overruled.

Q. Go ahead.

A. And she had a cut back in her hair, and she was very nervous, couldn't keep her mind on any one thing, was walking up and down, was very sensitive to any voice or anyone coming up the driveway. She was in a highly nervous state. Her mouth, the skin was all raw around the outside of her mouth, and also on her wrists her skin was raw.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Mrs. Potter, you have identified this letter of October 14th. Are you familiar with Mrs. Stoll's handwriting and were you at that time?

A. Yes, I was.

673 Q. Had you seen her writing or signature on various occasions previous to this time?

A. Yes. I had some of her writing in my possession that she had written me on a trip, and I am very familiar with it. I was at school with her.

Q. And what school did you attend?

A. Louisville Collegiate School.

Q. So you were entirely familiar with this handwriting?

A. I was, yes.

Q. And were you satisfied that this was her handwriting?

A. Yes, I was.

Q. Were you so familiar with it that you were not required to compare it with any of her other handwritings to determine its genuineness?

A. No, I was satisfied when I saw it.

Q. There was no variation in this handwriting from other handwriting of hers that you had.

A. Well, I didn't compare them to any other, but it seemed to me—I was perfectly satisfied in my mind that it was her handwriting.

Q. No apparent deviation or changes?

A. I didn't compare it that close, I didn't compare it, but it was very clear to me that it was her hand-

674 writing.. I have seen it many, many times.

Q. Did she write usually and customarily in this

large type of writing?

A. Yes. it seems to me.

Q. This, would you say, is a fair sample of her writing ordinarily and customarily?

A. Yes, I think so.

Q. Are you sure about that now?

A. Why no, I am not sure about it, because she probably writes many ways, but it is very clear to me that it was her handwriting. Everybody writes a little larger or a little smaller sometimes, depends on the size of the paper, I think.

Q. There was no noticeable difference or change in this from other handwritings of hers that you knew about and had in your possession?

A. No, I won't say that. I don't know how many different papers she has written in her life, but that seemed to be her handwriting very clear. I couldn't say that.

Q. What other schools did Mrs. Stoll attend?

The Court: If the witness knows of her own knowledge.

Mr. Hogan: She says she has known her since five, and, of course, if you know of your own knowledge.

675 A. I met her in about the Fifth Grade at Collegiate and then she stayed there and graduated and went to college, Bryn Mawr College.

Q. Where is Bryn Mawr located, for the purposes of the record?

A. Bryn Mawr.

Q. What state?

A. Pennsylvania.

Q. That's a girl's school?

A. That's a girls' college, woman's college.

Q. Rather an exclusive college for girls?

A. I don't think so. What do you mean by exclusive?

Q. Well, usually people of means attend that college, do they not?

A. It is not a public college, you have to pay to get in. There is no requirement on any amount of money to get in. I don't think the tuition is any more than any other college.

Q. It is generally looked upon as a rather high-class college.

A. Scholastically, it is. Scholastically, you mean?

Q. Scholastically and socially.

A. I don't know anything about the social, that's never advertised in any college, but scholastically it stands very high, I know that.

Mr. Hogan: That's all, Mrs. Potter.

Mr. Brown: That's all.

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676 CORNELIUS GERST called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Cornelius Gerst.

Q. Where are you employed?

A. Fidelity & Columbia Trust Company.

Q. Were you employed there in October, 1934?

A. I was.

Q. In what capacity?

A. Assistant Secretary.

Q. On October 11th, 1934, were you assigned to any unusual task?

A. We were. We were asked to assemble in the directors' room at 2:00 o'clock for a special assignment.

Q. What was that assignment?

A. To list the numbers of money.

Q. Just what did you do?

A. Well, we were each given a package of money and the numbers of each bill were listed on sheets of paper.

Q. Did you list money in your handwriting?

A. I did, and initialed each sheet.

Q. What initials did you put on?

A. C.A.G.

677 Q. I'll show you this piece of paper, headed "Page 3 $5.00," the initials "C.A.G."

Mr. Hogan: Mr. Inman, may I see those before you start?

Mr. Inman: Yes.

Q. I will ask you to tell the jury what that is.

A. That is a list of the first page of $5.00 bills of which we listed the numbers.

Q. Did you list those numbers yourself?

A. I did, personally, yes.

Q. And the numbers that are on this page, where did you get them?

A. From the bills themselves.

Mr. Hogan: Are you going to connect that up with later testimony?

Mr. Inman: Yes.

Q. I'll show this page marked "Page 8 $5.00" and the initials "C.A.G.", and ask you to tell the jury what that is.

A. We likewise listed the numbers off of each one of the bills in that package.

Q. All five dollar bills?

A. All five dollar bills.

Q. Did you list those yourself?

A. Listed them personally.

678 Q. I'll show you Pages 14, 23, 27, 33, 39 and 45, all bearing in addition to the page numbers I have indicated, the symbol $5.00 and the initials C.A.G., and ask you to tell the jury what those pages contain.

A. Likewise a list of the various packages of money that was handed to us to be listed, and I personally listed each number.

Q. All $5.00 bills?

A. All $5.00 bills. All $5.00 bills.

Q. I'll show you these papers headed Page 50, Page 56, Page 62, and Page 67, bearing in addition to the page number I have indicated, the symbol $10.00 and the initials "C.A.G." and ask you to tell the jury what those pages contain.

A. These pages likewise contain the numbers of the packages of ten dollar bills, and each number was listed by me personally.

Q. I will ask you to file all of these pages with your testimony as Government Exhibit No. 35.

A. I do.

(The pages referred to were handed to the reporter and filed with the record as Government Exhibit No. 35.)

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. You have no personal knowledge of what hap-
679 pened to that money after you listed it?

A. No, sir, I do not.

Mr. Hogan: That's all.

ARTHUR E. GOHMANN called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Arthur E. Gohmann.

Q. Where are you employed?

A. Fidelity & Columbia Trust Company.

Q. In what capacity?

A. Trust Investment Officer.

Q. Were you employed there in October, 1934?

A. I was.

Q. On October 11th, 1934, were you assigned to any unusual task?

A. Yes.

Q. What was that task?

A. It was the listing of currency for the payment of the ransom money.

Mr. Hogan: That's objected to.

680 The Court: Objection sustained. He doesn't know of his own accord what the money went for or what it was.

The Witness: Except we were told.

The Court: Yes, except what you were told. Objection sustained as to what he was told.

Mr. Inman: You are objecting only to the answer of

the ransom money.

Mr. Hogan: Will the Court instruct the jury?

The Court: Yes. The jury will not consider that phase of it.

Q. You were, however, listing currency, were you not?

A. Yes, sir.

Q. Where did you do that?

A. Down in the directors' room of the bank building at Fifth and Jefferson.

Q. Did you list that on sheets of paper?

A. Yes, sir.

Q. How did you mark the sheets of paper?

A. Well, we made two columns, as I recall it, one listing the type of bill and the other the number of the bill, and each man initialed the pages that he worked on.

Q. I'll show you these papers bearing the heading, Page 1 $5.00 denomination; Page 5, $5.00 denomination; Page 16, $5.00 denomination; Page 21 $5.00; page 29 $5.00; Page 36 $5.00; and Page 43 $5.00, and ask you to examine
681 them and tell the jury if there are any initials appearing on each of those pages.

A. Each page has my initials of "A.E.G." on the upper righthand corner, also the denomination of the bill.

Q. And what other information is on those pages?

A. Beside the denomination of the bills it shows the type of bill and the number on the bill.

Q. The serial number?

A. The serial number, yes.

Q. Did you write those serial numbers?

A. I did.

Q. Where did you get them?

A. Got them from the bills themselves.

Q. I'll show you these papers, headed Page 54 $10.00 and Page 69 $10.00, and ask you to tell the jury what initials appear on those pages.

A. In the upper righthand corner "A.E.G." Those are my initials on $10.00 denominations.

Q. And what other information appears on those papers?

A. The type of bill and the serial number of the bill.

Q. And where did you get those serial numbers?

A. Direct from the bill itself, from the currency itself.

682 Q. I'll show you these papers, marked Page 71 $20.00 and Page 72 $20.00, and ask you to tell the jury what initials appear on those pages.

A. The same initials, my own—"A.E.G."

Q. And what information is contained on those two pages?

A. The same, the type of bill and the serial number of the bill.

Q. Where did you get that information?

A. Got it directly from the currency itself.

Q. And all of these were $20.00 bills?

A. Those two pages were all $20.00 bills; yes, sir.

Q. I will ask you to file these sheets with your testimony as Government Exhibit No. 36.

A. I do.

(The pages referred to were handed to the reporter and are filed with the record as Government Exhibit No. 36.)

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Mr. Gohmann, you do not of your own personal knowledge know what went with that money after you listed it on that sheet?

A. Beg your pardon.

Mr. Hogan: Read the question, please.

683 (The last question on the preceding page was read by the reporter.)

A. What went with the money?

Q. Yes.

A. No, I don't know of my personal knowledge.

Mr. Hogan: That's all, sir.

MATTHEW B. SENN called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Redirect Examination by Mr. Inman.

Q. State your name to the jury.
A. M. B. Senn.
Q. Where are you employed?
A. Fidelity & Columbia Trust Company.
Q. Here in Louisville, Kentucky?
A. Yes, sir.
Q. In what capacity?
A. Treasurer.
Q. Were you employed by that company in October, 1934?
A. Yes, sir.
Q. On October 11th, 1934, were you assigned to any unusual duties?
A. That's a little difficult to say.

684 Q. In October, 1934, were you assigned to see someone and record the serial numbers of various five and ten dollar bills?

Mr. Hogan: Judge, I want to object to that.

The Court: On what basis?

Mr. Hogan: He said that he didn't remember being assigned to any unusual duty, as I understood him.

Mr. Inman: He didn't say that.

The Court: He didn't say he didn't remember. He said that was hard to do. You think the question is leading, is that the idea?

Mr. Hogan: I will withdraw it.

A. Will you repeat it, please?

(The question was read by the reporter.)

A. It was around that time, yes.
Q. Was anyone else assigned at the same time with you?
A. Yes.
Q. Who?
A. Mr. Gohmann, Mr. Gerst, Mr. Tobe, Mr. Adams, Mr. Render.
Q. Where did you perform those duties, Mr. Senn?
A. In our directors' room.
Q. I'll show you these papers, bearing the heading Page

6 $5.00, the initials "M.B.S."; Page 10 $5.00, the ini-
685 tials "M.B.S."; Page 15 $5.00 and the initials "M.B.S."; Page 26 $5.00 and the initials "M.B.S."; Page 35 $5.00 and the initials "M.B.S."; Page 42 $5.00 and the initials "M.B.S." and ask you to tell the jury what those papers contain.

A. Serial numbers taken off of $5.00 bills, United States currency.

Q. I'll show you these pages, headed Page 46 $10.00 and the initials "M.B.S."; Page 52 $10.00 and the initials "M.B.S."; Page 60 $10.00 and the initials "M.B.S."; Page 64 $10.00 and the initials "M.B.S."; and ask you to tell the jury what information is contained in those papers.

A. Serial numbers taken off of $10.00, United States Government bills.

Q. Did you take that information yourself?

A. I did.

Q. And record those serial numbers?

A. I did.

Q. Are they your initials on those pages?

A. Yes.

Q. I will ask you to file those pages with your testimony as Government Exhibit No. 37.

(The pages referred to were handed to the reporter and are filed with the record as Government Exhibit No. 37.)

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Mr. Senn, you don't know what happened to
686 this money after you listed it.?

A. No, I do not.

Mr. Hogan: That's all.

ERNEST V. KAMPFMUELLER called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Testimony of Ernest V. Kampfmueller

Direct Examination by Mr. Inman.

Q. State your name to the jury.
A. Ernest V. Kampfmueller.
Q. Where are you employed?
A. Fidelity & Columbia Trust Company.
Q. In what capacity?
A. I am now Assistant Vice President.
Q. In October, 1934, were you employed by that company?
A. I was.
Q. On October 11th, 1934, were you assigned to any unusual duties at that bank?
A. I was.
Q. What were those duties?
A. I was told to be in the directors' room at 2:00 o'clock. At that time I didn't know what I was supposed to do.

687 Q. What did you do there?
A. I listed the numbers of currency on those yellow sheets.
Q. Did you place an initial on those sheets?
A. I did.
Q. What initials?
A. E.V.K.
Q. I'll show you these pages, headed Page 5 $5.00 with the initials E.V.K.; Page 11 $5.00 and the initials E.V.K.; Page 18 $5.00 and the initials E.V.K.; Page 24 $5.00 and the initials E.V.K.; Page 30 $5.00 and the initials E.V.K.; Page 37 $5.00 and the initials E.V.K.; Page 44 $5.00 and the initials E.V.K.; and ask you to tell the jury what information is contained on those sheets.
A. Well, they are the serial numbers of various $5.00 bills that were given to me that I had to list the numbers on these sheets.
Q. Did you record those serial numbers?
A. I did.
Q. Where did you get them?
A. The bills?
Q. No, the serial numbers?

A. Oh, off the bills.

Q. Now, I will show you these pages, headed Page 51 $10.00 and the initials E.V.K.; Page 59 $10.00 and the initials E.V.K.; Page 65 $10.00 and the initials E.V.K.;
688 and ask you to tell the jury what information is contained on those sheets.

A. Well, these are the serial numbers that I took from the bills of the $10.00 and listed them on these sheets.

Q. You recorded them?

A. I did.

Q. I will ask you to file those pages with your testimony as Government Exhibit No. 38.

A. I do.

(The pages referred to were handed to the reporter and are filed with the record as Government Exhibit No. 38.)

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Mr. Kampfmueller, you don't know what happened to the money after you listed it.

A. I do not.

Mr. Hogan: That's all.

L. M. RENDER called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

689 A. L. M. Render.

Q. Where are you employed?

A. Fidelity & Columbia Trust Company.

Q. In what capacity?

A. I am one of the Vice Presidents.

Q. In October, 1934, were you employed by that company?

A. I was.

Q. On October 11th, 1934, were you assigned to any unusual duties there?

A. Yes, sir.

Q. What were those duties?

Mr. Hogan: Mr. Render, how do you spell your name?

The Witness: R-e-n-d-e-r.

Q. What were those unusual duties?

A. To tabulate a lot of currency.

Q. Tabulate it in what manner, Mr. Render?

A. Take the serial numbers of the bills.

Q. Where did you perform those duties?

A. In the directors' room of the Fidelity & Columbia Trust Company-Citizens Union National Bank.

Q. Did you record the serial numbers of bills?

A. I did.

Q. Did you place any initial on the sheets of paper you used?

690 A. Yes, I placed my initials, L.M.R.

Q. I'll show you these papers, headed Page 7, L.M.R. and the symbol $5.00; Page 17, L.M.R. and the symbol $5.00; Page 20, L.M.R. $5.00; Page 28, L.M.R. $5.00; Page 34, L.M.R. $5.00; Page 40, L.M.R. $5.00; and tell the jury what information is contained in those pages.

A. That's the serial numbers—the list of serial numbers of the bills that were in those various packages.

Q. What size bills?

A. Those were all $5.00 bills.

Q. Did you list those yourself?

A. I did. That's my handwriting.

Q. Where did you get the numbers?

A. From the bills themselves.

Q. I'll show you these, headed Page 47 L.M.R. $10.00; Page 53 L.M.R. $10.00; Page 57 L.M.R. $10.00; Page 63 L.M.R. $10.00; and Page 70 L.M.R. $10.00; and ask you to tell the jury what information is contained on those pages.

A. That lists the serial numbers of the ten dollar notes.

Q. Did you list them yourself?

A. I did.

Q. And where did you get those numbers?

A. From the bills themselves.

Q. I will ask you to file these pages with your
691 testimony as Government Exhibit No. 39.

A. I do so file them.

(The pages referred to were handed to the reporter and are filed with the record as Government Exhibit No. 39.)

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Mr. Render, you don't know what happened to the money that you listed on those pages?

A. No, sir; not the ultimate destination.

VINCENT TOBE called as a witness in behalf of the Government, benig duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Vincent Tobe.

Q. Where are you employed?

A. Jefferson Boat Machine Company.

Q. In October, 1934, where were you employed?

A. Fidelity & Columbia Trust Company.

Q. In what capacity.

A. Security Teller.

Q. On October 11th, 1934, were you assigned to
692 any unusual duties there?

A. Yes, sir.

Q. And what was the assignment?

A. Putting up the money, the ransom money.

Mr. Hogan: That's objected to.

The Court: Now, Mr. Tobe, the question is—you don't know of your own knowledge, I suspect, what the money was. You were just given money of some kind.

The Witness: That's right.

The Court: Don't describe it in any other way. The jury

will be instructed not to consider that description of the money.

A. Taking the numbers of the bills.

Q. What did you do with the numbers?

A. Listed them on a sheet.

Q. Did you identify those sheets that you worked on?

A. Yes, sir.

Q. How?

A. With the initials on the bottom.

Q. I'll show you these sheets, headed Page 2 $5.00 and the initials V.G.T.

A. That's correct.

Q. Page 12 $5.00 and the initials V.G.T.

A. That's correct.

Q. Page 19 $5.00 and the initials V.G.T.

A. That's correct.

693 Q. Page 25 $5.00 and the initials V.G.T.

A. That's correct.

Q. On page 32 $5.00 and the initials V.G.T.

A. That's correct.

Q. Page 38 $5.00 and the initials V.G.T.

A. That's correct.

Q. And ask you to tell the jury what those pages contain.

A. They contained the money that we were taking the numbers of.

Q. Serial numbers?

A. Serial numbers.

Q. Did you write those serial numbers?

A. Yes, sir, I have written everyone of them.

Q. Where did you get them?

A. They were turned over to us down at the directors' room.

Q. I mean, were they taken from the original bill?

A. From the actual bill; yes, sir.

Q. Were they all $5.00 bills?

A. No.

Q. On those pages?

A. Five's on these pages, yes, sir; five's, that's correct.

Q. All right, I'll show you this page, headed Page 48

$10.00 and the initials V.G.T.

694 A. That's correct.

Q. Page 55 $10.00 and the initials V.G.T.

A. That's correct.

Q. Page 61 $10.00 and the initials V.G.T.

A. That's correct.

Q. Page 66 $10.00 and the initials V.G.T.

A. That's correct.

Q. And ask you to tell the jury what information is contained on these pages.

A. That's the serial numbers of the $10.00 bills.

Q. Did you write those serial numbers?

A. Yes, sir, I have written everyone of them.

Q. And the $10.00 bills, I will ask you whether you got that information from the ten dollar bills.

A. Correct.

Q. I will ask you to file these pages with your testimony as Government Exhibit No. 40.

A. I do.

(The pages referred to were handed to the reporter and are filed with the record as Government Exhibit No. 40.)

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Mr. Tobe, you don't know what happened to the money after you listed it.

A. No, sir; I do not.

Mr. Hogan: That's all, sir.

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695 FLAVIE C. ADAMS next called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Flavie C. Adams.

Q. Where are you employed, Mr. Adams?

A. I am not employed; I have a business of my own.

Q. In October of 1934, where were you employed?

A. At the Fidelity & Columbia Trust Company.

Q. In what capacity?

A. I was a Trust Officer.

Q. On October 11th, 1934, were you assigned to any unusual duties?

A. Yes.

Q. What was that duty?

A. Taking the numbers on certain currency.

Q. What did you do with that number?

A. Listed it on those sheets of paper.

Q. I will show you these pages—first, I will ask you, did you identify the pages by any mark or initial?

A. Putting on initials.

Q. What initials?

A. F.C.A.

Q. I'll show you these pages, headed Page 4
696 $5.00 and the initials F.C.A.; Page 13 $5.00 and the initials F.C.A.; Page 22 $5.00 and the initials F.C.A.; Page 31 $5.00 and the initials F.C.A.; Page 41 $5.00 and the initials F.C.A.; and ask you to tell the jury what information is contained on those pages.

A. On those pages are a list of serial numbers of $5.00 bills, and they were listed by me as verified by my initials at the top.

Q. Were they taken from the original bills?

A. Taken from the original bill.

Q. I'll show you these papers, headed Page 49 $10.00 and the initials F.C.A.; Page 58 $10.00 and the initials F.C.A.; and Page 68 $10.00 and the initials F.C.A.; and ask you to tell the jury what is contained in those pages.

A. Those are numbers, serial numbers, taken from ten dollar bills which were listed here by me, and my initials are here to identify them.

Q. I will ask you to file those pages with your testimony as Government Exhibit No. 41.

A. I do.

(The pages referred to were handed to the reporter and are filed with the record as Government Exhibit No. 41.)

Mr. Inman: You may ask the witness.

697 Cross-examination by Mr. Hogan.

Q. Mr. Adams, you don't know what happened to the money after you listed it?

A. No.

Mr. Hogan: That's all.

The Court: Members of the jury, we will now recess for lunch. Do not discuss the case among yourselves or with anyone, or permit anyone to talk about it in your presence. The Marshal will recess until 2:00 o'clock.

Convened, pursuant to adjournment, and the following proceedings were had:

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698 BERRY V. STOLL, was called as a witness by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name?

A. Berry V. Stoll.

Q. Where do you live?

A. Louisville, Kentucky, on Lime Kiln Lane.

Q. Are you the husband of Mrs. Alice Speed Stoll?

A. I am.

Q. On October 10, 1934, approximately what time did you return from your office that day?

A. Approximately 5:30 that evening I got home.

Q. Now, without detailing any conversation that you may have had, who did you find there in your home at that time?

A. When I got home Ann Woolet, the maid, was bound upstairs. Her hands were bound with wire and she was right at the doorway of the guest room, standing there, in a hysterical condition.

Q. With reference to your home, in what portion of your home was she?

A. The entrance to the guest room, in the hall
699 between the guest room and the bath room—the two rooms were right together.

Q. After you had found Mrs. Woolet there, what did you do?

A. I ran into the guest room, saw the condition of the room, the large splotches of blood on the bed, a pool of blood in the center and another pool of blood close to it on the side, and on the side of the bed, dropped on the floor was the ransom note and up near the head of the bed on the floor was a pipe wrapped in paper.

Q. I show you government Exhibit No. 34 and ask you to examine that and tell the jury whether or not that is the iron pipe wrapped in the condition in which you found it at that time?

A. Yes, this is the iron pipe that was lying on the floor by the bed in the guest room.

Q. Now I show you government Exhibit No. 33, and ask you to examine that and tell the jury whether or not that is the ransom note?

A. This is the ransom note that was on the floor by the bed in the guest room.

Q. Now after you examined the floor and found these two things, what did you do?

A. I unbound Ann first, and took the wire off of her wrists. She was bound securely with wire; and
700 then I ran down the stairs and she followed me and we drove to Mr. James Clark, Jr.'s house whose entrance is directly opposite our entrance, so you drive down our entrance, across Lime Kiln Road and up to the other entrance.

Q. I will show you government Exhibit No. 1 and this is representing your entrance here—

A. This is our home and I came down the driveway and across over into Mr. Clark's home which is now owned by Mr. Sallee. Mr. Clark died and Mr. Sallee bought the place.

Q. You went in your automobile?

A. Yes.

Q. Who accompanied you?

A. Ann came with me—the maid.

Q. At that time did you communicate with the authorities?

A. Yes. I called the police—the county police and the city police. I called my wife's father, Mr. Speed, and I called my brother, George Stoll, asking him to—

Q. (Interrupting) Let's not detail any conversation that you had with him. Now after you had communicated with authorities, the necessary authorities, and other necessary persons, what did you do, Mr. Stoll?

A. I then went back to the house and I looked
701 over into the ditch right near the entrance and on both sides of the driveway—I stopped and looked around there because I thought sure Mrs. Stoll was killed from the amount of blood in the room and—

Mr. Hogan (Interrupting): We object to what he thought, Your Honor.

The Court: Objection sustained.

Q. Now then shortly thereafter did agents of the Federal Bureau of Investigation and various police officers come to your assistance, Mr. Stoll?

A. Yes. First the police, and the fingerprint expert and my brothers, Mr. and Mrs. Speed, the head of the Department of Safety, the Mayor, and the Department of Justice men arrived within a few minutes of each other. Mr. Marshall Bullitt, as I recall it, brought the Department of Justice men out with him in his car, and they took charge of the case.

Q. Now some time afterwards was this ransom note opened and read?

A. Yes, we went into the dining room around the table and opened the ransom note and we read it. We were very careful not to touch it from a fingerprint standpoint because we wanted to get his fingerprints off of it.

Mr. Brown: At this time I would like to read the ransom note. I don't believe it has been read yet in
702 evidence.

The Court: It has not been read, nor has it been

introduced in evidence yet.

Q. First, I will ask you if this is the ransom note that you found at that time and the one that you just said you read?

A. Yes, this is the ransom note that we read.

Mr. Brown: It has been marked for identification as Government Exhibit No. 33, and I would now like to introduce it in evidence.

The Court: All right.

Mr. Brown (Reading):

(In pencil across the envelope):

"$50,000 for Mrs. Stoll"

(In black type across the envelope):

"TO THE MEMBERS OF THE STOLL FAMILY"

(And in pencil after that):

"And Mr. Speed"

(In red type across the envelope):

"DO NOT CALL IN POLICE, BUT READ THIS LETTER, OR YOU WILL NEVER SEE STOLL AGAIN, EITHER ALIVE OR DEAD."

(Across the top of the ransom note in ink):

"Intended for C. C. Stoll at first"

(In black type):

703 "TO THE MEMBERS OF THE STOLL FAMILY:

(And after that in pencil):

"And Mr. Speed" (In red type): "WARNING"

(In black type):

"Stoll has been kidnapped for ransom. Overcome your first natural impulse to call in the police. Otherwise, you will regret it.

"The life of Stoll, and later on the lives of his sons and their families, depend on the Stoll family READING THIS LETTER THOROUGHLY AND OBEYING OUR INSTRUCTIONS FROM THE BEGINNING AND FOR ALL TIME THEREAFTER.

"Read this letter and you will realize that we mean business. We want the money, not the life of Stoll, BUT IF YOU LET THE POLICE KNOW THE DETAILS OF THIS LETTER, OR WHERE PAYMENT OF THE RANSOM MONEY IS TO BE MADE, OR IF THERE IS ANY EVIDENCE THAT YOU MEAN TO DOUBLE CROSS US BY SENDING A 'DUMMY' PACKAGE, WATCHING THE INTERMEDIARY NAMED IN THIS LETTER, OR OTHERWISE TRY TO SET A TRAP FOR US, WE ARE PREPARED TO DO THIS:"

(In red type):

"KILL STOLL AND BURN HIS BODY; SCATTER HIS ASHES IN A STREAM OF WATER;
704 CLEAN THE GALVANIZED TANK IN SUCH A MANNER AS TO DEFY A MICROSCOPIC EXAMINATION OF IT. THERE WILL BE NO ASHES LEFT TO ANALYZE. THIS WILL KEEP THE LAW FROM FINDING THE CORPUS DELICTI, OR THE BODY OF STOLL.

(In black type):

"This is no idle threat. We are fully aware that kidnaping is punishable by death in Kentucky, and also we would be subject to the death penalty under the Federal Law, or Lindberg Law, if we were forced by the publicity to take Stoll or his body over a state line. However, the CAPITALISTS with their power got this Law passed, as it could not be wrong to rid this country of the capitalist or make him share his money with his less fortunate brothers. It would be an act of patriotism to kill this capitalist, Stoll, who was overheard to say, concerning Roosevelt and the

NRA, "Mr. so-and-so, we are in the hands of a dictator. We capitalists do not know what to look forward to; we are conserving our money; why, I would not spend one dime to even paint up my filling stations.' No, he wouldn't, but he will spend plenty to get returned to his family alive. He is really in the hands of a dictator now. It is this octopus, the capitalist,
705 who is menacing the very foundations of our country. It is a serious mistake for right-thinking men to declare it an offense to kill or kidnap for a ransom a capitalist.

"HOWEVER, we cannot aggravate our offense any by killing Stoll, if we have to. He is the main witness against us, and his body could not be produced, so the law could not prove we killed him.

"We are taking Stoll to our farm. We have already been told that we would be dispossessed within ten days for not paying rent. Our money is low. We are not able to feed ourselves for long, much less Stoll. We are just about as desperate as once-respected working-men can get, harassed as we are by capitalists such as Stoll, Mellon, Morgan, Insull, etc.

"FROM THESE CONDITIONS, THERE IS NO TIME FOR A BUNCH OF NEGOTIATIONS BETWEEN US, OTHER THAN THOSE IN THIS LETTER. NO BARGAINING.

"In the kidnapings of Baby Lindberg, William Hamm, Jr., Jake Factor, Charles F. Urchel, Nell Donnelley, Charles Boetcher 11, etc., the police were called in and the Federal men too, YET THE FAMILIES WERE FORCED TO PAY THE RANSOM MONEY, because the police were unable to solve the cases
706 in time to prevent payment. The police only delayed the return of the victim, and caused more suffering all around. ONCE YOU CALL IN POLICE, YOU CANNOT GET RID OF THEM WHEN YOU DISCOVER THAT THEY CANNOT BRING YOUR FATHER BACK, AND YOU WOULD LIKE TO GO AHEAD AND PAY THE RANSOM AS DIRECTED,

BUT THEY WONT LET YOU CONTACT THE KIDNAPERS.

"You cannot deal SECRETLY with the police, either. There is always some crooked cop who will tip off a newspaper reporter for a sum of money.

"YOU WOULD BE UNABLE TO CATCH US IN TIME TO SAVE THE LIFE OF STOLL. We are not the average run of criminal, as you have found out. The police can not go out to some pool hall and round up our gang. We have no record. It is useless to look in the conventional Rogues' Gallery for our pictures. Our job is too carefully planned and executed. Police will waste your time having you run down to the station to look over suspicious or known criminals. (In red type) THEN IT WILL BE TOO LATE FOR YOU TO SAVE STOLL'S LIFE. We cannot wait over a week for our money.

"RESULTS OF HAVING TO KILL STOLL:
707 Besides sentimental reasons, the family will not be able to collect his life insurance, because you CANNOT FURNISH PROOFS OF DEATH, as there is no CORPUS DELICTI; His business will suffer from lack of his leadership and prestige; The bank loans are based on the strength of his life insurance, and when they find out how he was done away with, and that his insurance cannot be collected, they will press the company for more collateral on their loans.

"COMPLETE INSTRUCTIONS FOR PAYMENT ARE ON NEXT PAGE: TURN OVER."

(Second page)

(In ink) "SAME FOR MRS. STOLL EXCEPT AMOUNT—$50,000"

(RED TYPE) INSTRUCTIONS

(Black type) "AMOUNT OF RANSOM $50,000 (fifty thousand dollars).

"$25,000 to be in $10.00 bills and $25,000 to be in $20.00 bills.

"Put this money in as small a paste-board box as possible; pack and wrap it carefully so that it will be accepted by the Railway Express Agency; declare
708 the value of package at $10.00 do not state what it really contains.

"Address it carefully and plainly; then send it by RAILWAY EXPRESS ONLY, to the INTERMEDIARY WHO STOLL AND ONE OF OUR MEMBERS AGREE ON BEFORE HE IS TAKEN FROM THE HOUSE.

"THIS INTERMEDIARY'S NAME WILL BE FILLED IN AT THE BOTTOM OF THIS PAGE BY STOLL. It will have to be one of several business men living in Nashville, Tennessee, who we know to be a friend of Stoll, and who we are prepared to watch in order to see if you try to set a trap for us. We will allow Stoll to choose one of these men.

"THIS INTERMEDIARY MUST HAVE ABSOLUTE FREEDOM FROM POLICE. HE MUST NOT EVEN BE QUESTIONED BY ANYONE. YOU MUST NOT CORRESPOND WITH HIM. (Red type): IF HE IS PUT WISE, THE DEAL IS OFF AND WE WILL CARRY OUT OUR THREAT AS TO STOLL. (Black type): We must have a clear opportunity to contact the intermediary. We cannot do that with police surrounding the house. If they do, you can take our word that we will know of this fact in advance, and then we will make no effort to collect the money, but will then do what we have said we would about Stoll.

709 "STARTING THE DAY AFTER THE KIDNAPPING (Red type): WE GIVE YOU 5 (five) DAYS (not including a Sunday) TO GET THE MONEY INTO THE HANDS OF THE INTERMEDIARY. THIS MEANS THAT IT MUST BE SENT ON THE FOURTH DAY IN ORDER TO ARRIVE ON THE FIFTH. (Black type): Do this sooner, if possible, as the sooner Stoll is returned, the easier it will be on him.

"THEN, JUST AS SOON AS WE GET THE MONEY INTO OUR HANDS, STOLL WILL BE

RELEASED UNHARMED. To this we give you our word.

"We will call Express Agency in Nashville and see when your package arrives. (We will call from a pay station far from where we hold Stoll.)

"Do not take the serial numbers of the money. (Red type): IF YOU MAKE ANY PUBLICITY OF THIS CASE AFTER STOLL IS RETURNED, OR TRY TO CATCH US IN ANY WAY AFTERWARDS, WE WILL SHOOT DOWN YOUR FAMILY FROM OUR CAR WITH A 30-30 RIFLE. (Black type): Do not waste our time or yours trying to reduce the ransom. You can get $30,000 or else—.

"THERE CAN BE NO OTHER NEGOTIATIONS. WE DO NOT HAVE TIME TO BARGAIN. IF
710 YOU DELAY AND STALL FOR TIME, WE HAVE TOLD YOU OUR POSITION, AND WHAT MUST HAPPEN TO STOLL. We have no other alternative if we do not receive the money. THIS JOB IS SO ARRANGED THAT NO ONE OUTSIDE THE STOLL FAMILY WILL KNOW WHAT HAS HAPPENED AT THE START. It is for you to keep it that way.

"Explain Stoll's absence as illness or say he is out of town.

(Red type) "IF THIS IS GIVEN TO POLICE OR PRESS, NOTHING CAN SAVE STOLL.

(Black type)

"NAME OF INTERMEDIARY (to be filled in by Stoll (scratched out in pen and ink).

"Mr. T. H. Robinson

"Street 1716 Ashwood Avenue

"Town NASHVILLLE, TENNESSEE

"WE ASSURE YOU THAT PACKAGE OF MONEY WILL NOT GET INTO WRONG HANDS, SO DO NOT TRY TO CONTACT THIS MAN, AS IT MAY UPSET PLAN OF PAY-OFF."

Q. Now, Mr. Stoll, after this ransom note was read, were the necessary steps taken to carry out the instructions of the kidnapper?

A. They were.

(At this point the ransom note is handed to the Reporter and filed.)

711 Q. When next did you see your wife, Mr. Stoll?

A. Five or 6 days later.

Q. On the afternoon of her return?

A. Yes, on the afternoon of her return when she came back with Rev. Dr. Clegg, from Indianapolis, and Mrs. Clegg, and the Department of Justice men.

Q. That was on October 16, 1934?

A. Yes.

Q. Now directing your attention to the day of the kidnapping, October 10, 1934, did you see your wife on that day?

A. Not in the afternoon. I did in the morning before I left for work.

Q. What was her physical condition on the morning of October 10th, 1934 when you left for work?

A. Well she had a cold and she had not been feeling very well due to that cold, but outside of that she was all right.

Q. On October 16, 1934, when your wife was returned to you, tell the Court what her physical condition was?

Mr. Hogan: That is objected to on the same basis as heretofore given.

The Court: Objection overruled and give you an exception.

712 A. She was in a horrible shape. Her lips were torn and bleeding from where the adhesive tape had been, and raw. There was horrible blood all over her forehead. Her head was covered with blood and she was completely unnerved and completely shattered.

Q. We will leave the subject of her physical condition, Mr. Stoll. Who was at your premises when she returned?

A. The two Department of Justice men and myself, Mr. Wynn and Mr. Kerr. Everybody else had been ordered away by the Department of Justice.

Q. So only the three of you were there at your home?

A. Yes.

Q. Upon your wife's return, at the time of your wife's return, was any money received by you, Mr. Stoll?

A. Yes, she brought back $470.00, as I recall it.

Q. Did you check this amount of money against any list or with anyone?

A. Yes, we checked it against the original list of the moneys we had sent for ransom and we checked that list. I checked it with Mr. Connelly, as I recall, with the Department of Justice.

Mr. Hogan: If Your Honor please, I don't know that there is any testimony that he had any part in pre-
713 paring this list.

The Court: Well the list has been introduced and the list can be produced and this witness asked if he assisted in checking that list, if you think that is necessary.

Mr. Brown: Well then we will introduce that through Mr. Connelly.

Q. Did you deliver this money to Mr. Connelly?

A. Yes.

Mr. Brown: That is all.

Cross-examination by Mr. Hogan.

Q. Mr. Stoll, did you have a phone conversation over the phone the morning after Mrs. Stoll was returned about some money? About the amount of money that was returned by your wife?

A. A phone conversation about the amount of money returned?

Q. Yes?

A. I may have had, but I don't recall.

Q. Was the maid there the morning after your wife was returned?

A. She came back the following day after her
714 return. She was not there at the return. There were only the two Department of Justice men and myself and the dog when she got back.

Q. Why were all these people cleared away from there?

A. The Department of Justice thought it best. They gave orders and we followed their instructions.

Q. Was Mr. Fowler Woolet in your employ?

A. He was.

Q. And Mrs. Ann Woolet, his wife, the maid?

A. Yes, she was.

Q. Was Mrs. Woolet there the morning after Mrs. Stoll's return?

A. I don't recall whether it was the morning after—they came later in the day. They went over and stayed with my wife's mother and father. They went over to their house where they had room for them to sleep and we did not want anyone on the place that night and so everyone left.

Q. I will ask you to state if on the morning after your wife's return, which would be October 17, 1934, if you didn't have a phone conversation from your home and in which you advised the party on the other end of the line that Mrs. Stoll had returned and brought home with
715 her $25,000?

A. I am positive I had no such conversation. I did not.

Mr. Brown: I would like to know the name of the person he is supposed to have had such conversation with if he knows.

The Court: Can you say whether the call came to him, or whether he made the call? Or who it was from and who it was to?

Mr. Hogan: I asked him if he was not talking over the phone in his residence—

The Court (Interrupting): To whom?

Mr. Hogan: To that party I do not know. I am asking him if he had such a conversation.

The Court: Do you mean that you don't know or are you not willing to state?

Mr. Hogan: I don't know.

The Court: Well if he doesn't know, that is all he can say.

A. I don't know of any such conversation

Mr. Hogan: That is all.

716 WILLIAM S. SPEED was called as a witness by the government, and after having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury?

A. William S. Speed.

Q. Where do you live?

A. 2828 Lexington Road, Louisville.

Q. Directing your attention to October 10, 1934, the day of the kidnapping of your daughter, I will ask you if at any time during that day you visited your daughter's home on Lime Kiln Road?

A. Yes; after we heard of the kidnapping.

Q. I will hand you government Exhibit No. 33, being the ransom note, and ask you if you saw or there was read to you on that occasion that ransom note?

A. It was read to several of us there on that late afternoon or evening—evening I think it was.

Q. With reference to the amount of money called for, $50,000, I will ask you who took steps, if any steps were taken, to raise that amount of money?

A. I was raising the money.

Q. Through what bank was that arranged for?

717 A. Through the Citizens Union—and the Fidelity.

Q. How much money was raised?

A. $50,000.

Q. Was that money paid over in accordance with the terms of the ransom note?

A. It was, exactly, I think.

Q. Now directing your attention to any specific period, was the $50,000 or any part thereof at any time returned to you?

A. Yes. I received about $46,000-some-odd—

Q. (Interrupting) Did you say Forty-six Thousand?

A. I mean $4600.00—no, I wish it was $46,000. I have got the date here if I can use the memorandum I made of that.

Q. That's all right.

A. $4687.64 on September 22, 1936.

Q. On what date?

A. September 22, 1936.

Q. That of the amount of the $50,000 that you caused to be paid over, that is the only sum of money that has been returned to you?

A. No, there was $506.00 in addition to that. I think practically all of that was brought down by Mrs. Stoll when she came home—making a total of $5193.64.

718 Q. With that exception, did you at any time receive any other money from this ransom money?

A. No.

Q. From whom, or from what agents if you can recall their names, or if you can identify them more than that, did you receive the money?

A. Did I what?

Q. From what agents of the government did you receive that $4600.00?

A. That $4687.00 was received from O. C. Dewey, Special Agent in Charge of the FBI.

Q. Here at Louisville?

A. Yes.

Mr. Brown: Your Honor, I believe the condition of the room, etc., has been sufficiently gone over.

Cross-examination by Mr. Hogan.

Q. Mr. Speed, where were you living at that time?

A. 2828 Lexington Road.

Q. Do you still live at that residence?

A. I do.

Q. What is your business?

A. I am connected with the Louisville Cement Company, also the Black Star Corporation, and the

719 Pioneer Coal Company.

Q. Does one of your companies operate the cement plant at Speed, Indiana?

A. Yes.

Q. You have a considerable interest in that plant, I believe?

A. Yes.

Q. And are you an officer in the rest of these companies?

A. Well I am Chairman of the Board of the cement company; and recently I was made president again of the two coal companies. My younger cousin was president of those two companies, and he died suddenly of a heart attack less than 2 years ago.

Q. In connection with the operation of those coal companies, do you have mines in the Eastern part of Kentucky?

A. Yes; we have mines in Eastern Kentucky.

Q. And you have your sales outlets here at Louisville?

A. The main sales office is here in Louisville.

Mr. Hogan: That is all.

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720 JOHN E. TARRANT was called as a witness by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury?

A. John E. Tarrant.

Q. Where do you live?

A. On Lightfoot Road, Louisville, Kentucky.

Q. In what business profession are you in?

A. I am a lawyer.

Q. During the year 1934 were you a lawyer here in the City of Louisville?

A. I was.

Q. Mr. Tarrant, directing your attention to October 10, 1934, and the days immediately following—

Mr. Brown: Your Honor, I think I will omit with this witness any description of the room and things like that. I think that has been sufficiently gone into.

Q. (Continuing) I will ask you if at the request of Mr. William S. Speed or anyone else, did you participate or take any part in the preparation of the money as called

for by the ransom note left at the Berry Stoll home by the kidnapper?

721 A. I was present at the Fidelity & Columbia Trust Company when certain of the junior executives of that bank were taking the serial numbers of the bills.

Q. Now, after taking the serial numbers of the bills and listing them, what was done with this money?

A. This money was wrapped in a brown paper package, addressed to Mr. Robinson, Sr. in Nashville, Tennessee, giving my name as the sender, marked up in the corner of it was taken to the express office and delivered to the express company for transmittal to Nashville.

Q. Did you take it to the express office?

A. I did.

Q. I will hand you a copy of a waybill and ask you if that is the duplicate copy of the waybill that you received indicating the transmittal of that money by the railroad express agency?

A. Yes it is.

Mr. Brown: I would like to introduce that as government's Exhibit No. 42.

(A copy of the waybill above described was handed to the Reporter; marked government exhibit No. 42, and filed.)

Cross-examination by Mr. Hogan.

Q. Mr. Tarrant, who accompanied you to the

722 railway express office?

A. Mr. Menefee Wirgman, President of the Fidelity & Columbia Trust Company. He was in my car, Mr. Hogan, and some of the FBI men were in a car behind us as guards. Who they were I do not remember at this time.

Q. Do you know the number of the FBI guards or agents?

A. No I don't remember. There was a car that came right along with us—behind us.

Q. A car partly or mostly filled with FBI Agents?

A. There were one or more in there; yes, sir.

Q. And to what office of the railway agency did you take this money?

A. We first took it down to Seventh Street, but it was so late at night that they were not prepared to take it over down there so then we took it over to 10th Street, back of the L. & N. Station.

Q. Tenth and Maple?

A. I think that was it.

Q. And you registered it or left it there at the railway express office?

A. That is correct.

Q. Did the FBI Agents stay there with it?

A. Mr. Hogan, I can't remember that. I don't know. I am inclined to think that one of them may have gone down with it, although I don't really know. I can't
723 answer that. I left it there and then my connection with it was over. I had a receipt from the express office and I went on home.

Q. And did you participate any further in the handling of this matter?

A. No, sir.

Q. I believe you had some trouble with some photographers down around here?

A. Unfortunately I did, Mr. Hogan.

Q. Weren't you an official photograph smasher around here for a while?

Mr. Brown: We object to that.

The Court: I don't think that has anything to do with this case.

A. I made a bad mistake there.

Mr. Hogan: That is all.

ROBERT E. CREAGER, was called as a witness by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Robert E. Creager.

724 Q. You now live at Ft. Lauderdale, Florida?

A. I do.

Q. In what branch of the service are you?

A. Coast Guard.

Q. How long have you been a United States Coast Guard?

A. Fourteen months.

Q. In October 1934 where were you employed?

A. Louisville Police Department, here at Louisville, Kentucky.

Q. In what capacity?

A. Patrolman Clerk.

Q. Did you have any special assignment?

A. I was identification clerk.

Q. On October 10, 1934, were you on duty?

A. I was.

Q. Did you receive any orders on that day directing you to any particular place?

A. I did.

Q. What orders did you receive?

A. I received orders to go to Mr. Berry Stoll's residence on Lime Kiln Lane.

Q. Well, did you go there?

A. I did.

725 Q. With whom did you go?

A. I went part of the way with Mr. Neville Miller, the Mayor at that time, and the rest of the way I went with Mr. Stoll.

Q. About what time did you arrive at the Stoll residence on Lime Kiln Road?

A. About 6 o'clock p. m.

Q. What was your particular purpose in being there.

A. To take finger prints that had been left there in connection with the reported kidnapping.

Mr. Hogan: That is objected to about kidnapping.

The Court: Did you say "reported kidnaping"?

Witness: Yes, I did.

Mr. Hogan: Then my objection is withdrawn.

Q. What procedure did you follow in attempting to secure finger prints there?

A. I was ushered into the house and met the maid

and asked her to take me to the different places where the man that was reported to have been in there and show me the articles that he had handled. She took me to the kitchen and showed me a water glass on the drainboard. I processed that glass and while I was in the kitchen Mr. Berry Stoll brought me a letter and a sealed envelope
726 and he was holding this letter with a handkerchief, and I saw some writing on this envelope and I got a newspaper and wrapped this letter in the newspaper. Then from there—

Q. (Interrupting) I show you this envelope, government Exhibit No. 33, and ask you if you have seen that envelope before?

A. I have.

Q. Where did you first see that?

A. In the kitchen of Mr. Berry Stoll's residence on Lime Kiln Lane.

Q. Is that the envelope that he handed you?

A. It is.

Q. And what did you do with it?

A. I wrapped it in a newspaper and carried it with me until I had completed my investigation.

Q. Now you say you processed a glass. Explain to the jury what you mean by processing?

A. I used a white powder, a manufactured powder dusted on there with a camel's hair brush—

Mr. Hogan (Interrupting): I am forced to interpose an objection because he is about to testify as a finger print expert and I don't believe his qualifications have been given.

The Court: You may qualify him.

727 Mr. Inman: I am not asking him to testify as a finger print expert.

The Court: Well you can ask him how long and what experience he has had doing that kind of work.

Q. How long had you been with the police department at that time?

A. September 26, 1926.

Q. How much experience had you had in processing articles for finger prints?

A. Since February 1, 1929.

Q. Where did you learn that procedure?

A. I learned it in the Bureau of the Louisville Police Department.

Q. Had you had much or little experience prior to October 10, 1934, in processing articles for finger prints?

A. I had had much.

Q. Are you familiar with the manner in which articles were processed and finger prints lifted?

A. I was.

Q. And did you follow that procedure in this case?

A. I did.

Q. Now as to the glass did you secure any finger prints there?

A. I did not.

728 Q. Well what other parts of the house or furniture did you process?

A. I went from the kitchen to a hall on the northerly direction. I saw a telephone lying on the floor that had been disconnected from the wall.

Q. Did you examine the wires on that telephone?

A. I did.

Q. What was the condition of those wires?

A. They had been disconnected.

Q. Did you process that telephone?

A. I did.

Q. And the box?

A. I did.

Q. And did you use the same procedure in processing that telephone and box?

A. I did.

Q. What was the result of your examination of that box and telephone?

A. I did not find any on the telephone. I processed the box and found several latent finger prints on it.

Q. What did you do then?

A. I photographed them.

Q. Do you have those photographs?

A. I do.

729 Q. Will you produce them?

A. Yes; here they are.

Q. Are these the original photographs?

A. They are.

Mr. Inman: I would like to file these photographs as government Exhibit No. 43.

(The photographs above identified were handed to the Reporter, marked government's exhibit No. 43, and filed.)

Q. Where was that telephone box when you examined it, Mr. Creager?

A. On the floor.

Q. Was that where it had been connected, or could you tell where it had been connected?

A. I didn't understand you.

Q. Where had it been connected at the time you found it? At the place you found it?

A. Right at the box.

Q. I mean, had the telephone box been removed from its connection with the wall or not?

A. It had.

Q. Did you go to the second floor of the Stoll residence?

A. I did.

Q. I will ask you whether or not you entered
730 the room immediately to your left as you go upstairs, the guest room?

A. I did.

Q. What did you see there?

A. I saw a bed and a chair and a dresser in this room.

Q. What was the condition of the bed?

A. It was mussed.

Q. Were there any spots on it or not?

A. There were.

Q. What were they?

A. Two spots that appeared to be blood spots on the bed.

Q. About what size?

A. The largest one was about 10 inches in diameter; and the smaller one was about 5 or 6 inches in diameter.

Q. What did you do with the envelope that Mr. Stoll

gave you in the kitchen of that home?

A. I turned it over to Capt. Messmer.

Q. John I. Messmer?

A. That's right.

Q. By whom was he employed?

A. The Louisville Police Department.

731 Cross-examination by Mr. Hogan.

Q. Did the Mayor contact you or was he already waiting to go along with you?

A. He contacted me.

Q. Did you wrap the note and the envelope in a newspaper?

A. I wrapped the envelope in a newspaper. It was closed and I can't tell you what was inside of it. I do know that it contained more paper, but what was inside, I did not know.

Q. All you know about is the envelope?

A. That's right.

Q. You are not prepared to say what was contained in the envelope, if anything?

A. No.

Q. Who handed you the envelope?

A. Mr. Berry Stoll.

Q. Were there any other people in the house than Mr. Berry Stoll?

A. There were.

Q. How many?

A. Well, I saw four.

Q. Did you know any of them?

732 A. I knew the two county police at that time, but I have forgotten their names now.

Q. Were there two county policemen who had arrived there ahead of you and the Mayor, etc.?

A. That is right.

Q. I believe you said Mr. Charles Stoll was in the car or picked you up later?

A. Yes.

Q. Was he a brother of C. C. Stoll?

A. No; he was a brother to Berry Stoll.

Q. Are those county officers still alive and on the county police force, or do you know what has happened to them?

A. I don't know.

Q. What were they doing there?

A. They were just standing there when I got there.

Q. Were they investigating?

A. No.

Q. Just standing still?

A. They were standing there talking to someone. I don't remember who they were talking to.

Mr. Hogan: That is all.

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733 CAPTAIN JOHN I. MESSMER, was called as a witness for the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. John I. Messmer.

Q. Are you now a Captain in the United States Army?

A. Yes, sir.

Q. Where do you live?

A. 3141 Texas, Louisville.

Q. In October 1934 where were you employed?

A. By the City of Louisville, in the detective bureau, as a detective, sergeant.

Q. Were you assigned to any particular duties?

A. At that time, the modus operandi file.

Q. On October 10, 1934, were you on duty?

A. Yes, sir.

Q. On that day did you receive any orders to go to any particular place?

A. Yes, sir.

Q. Where did you go?

A. In the neighborhood of 5:30 p. m., Mayor Neville Miller came to the Detective Bureau and told me to go with him.

734 Q. And did you go with him?

A. Yes I went to the Stoll residence on Lime Kiln Lane, in Jefferson County, Kentucky.

Q. About what time did you go there?

A. Well some time between 5:30 and 6:30 o'clock.

Q. Did you enter the Stoll Residence?

A. Yes; I did.

Q. When you entered, where did go first—that is, to what room?

A. I first went upstairs to the bed room to the left of the steps as you go up.

Q. Did you enter that room?

A. Yes, sir.

Q. What did you see in that room?

A. It was a bed room, with one bed, and a dresser and a chair and I think a chest of drawers and on the bed was a pink bedspread, and it had two fairly good-sized spots of blood on it. Underneath the bed I found what later developed to be a piece of pipe, wrapped in brown paper—

Q. (Interrupting) I show you government exhibit No. 34, and ask you if that is the pipe that you found there?

A. Yes, sir.

Q. When you picked it up, how did you pick it up?

A. By each end this way (indicating).

735 Q. Then what did you do with it?

A. I then placed it in a closet in the room to keep anyone from handling it with the idea of finger prints in mind. We did not want to destroy any finger prints that were on there or put any on.

Q. How long did you leave it there in that closet?

A. Possibly a half an hour while I made an examination of the room.

Q. Were you there in the room all the time?

A. Yes, sir.

Q. When you left the room what did you do with the pipe?

A. I took it with me.

Q. And where did you take it?

A. I went from that room down to the kitchen where I met Sgt. Creager who was working on a water glass, I

think, trying to get finger prints off of it.

Q. Did Sgt. Creager give you anything?

A. Yes he did. He gave me, a flat—well it later developed to be an envelope. It was then wrapped in a newspaper and he said I have the—

Q. (Interrupting) Not what he said. I show you government Exhibit No. 33 which is an envelope, and ask you if that is the envelope Sgt. Creager gave you?

736 A. Yes, sir.

Q. Was that sealed at that time?

A. Yes sir, it was.

Q. Now did you later open that envelope?

A. Yes, sir, I did.

Q. Where?

A. In the dining room of the Stoll home.

Q. And when was that opened?

A. Probably a half an hour after I received it. About a half an hour after Sgt. Creager gave it to me.

Q. At the time the envelope was opened, who was present?

A. Mrs. Speed, Mr. Speed—I can't recall all of them. I am sure they were all members of the Stoll family. The Agents who were there before the note was opened I remember very distinctly making sure everyone in the room was members of the Speed and Stoll families and the agents.

Q. And the Department of Justice Agents?

A. Yes, sir.

Q. When you opened the envelope did you find anything in it?

A. Yes, sir.

737 Q. I'll show you also what is designated Government Exhibit No. 33 and ask you to tell the jury if you have seen those two pages before.

A. Yes, sir. These were the two pages that were in the envelope when I opened it.

Q. Did you remove them from this envelope?

A. I did, sir.

Q. What did you do?

A. Read them to those present in the dining room.

Q. What did you then do with that letter?

A. It was returned to the envelope and re-wrapped in the newspaper, taken to Police Headquarters where I photographed it, and then it was turned over to the Federal Bureau of Investigation agent.

Q. I show you these photographs and ask you to tell the jury what they are.

A. They are the photographs that I made of these two pages.

Q. The ransom note?

A. The ransom note; yes.

Q. Have you compared these photographs with the ransom note you have in your hand?

A. Yes, sir. In addition to making them myself, I photographed and processed them myself.

738 Q. Would the photograph show black and red or only black in the photograph?

A. It would show only black and white.

Q. What did you do with the ransom note after you photographed it?

A. It was delivered to Agent Kerr of the F.B.I.

Q. Along with the envelope?

A. Yes, sir.

Q. When was that done, Capt. Messmer?

A. That was done—I think the photographing was started probably about 8:00, or something like that, in that neighborhood, 8:00 p. m., and I think it was around probably —Oh, maybe between 9:00 and 10:00 that the note was turned over to the Federal Bureau of Investigation.

Q. I will ask you to file these photographs of the ransom note with your testimony as Government Exhibit No. 44.

A. I do.

(The said photographs are filed with the record as Government Exhibit No. 44.)

Q. Did you examine the telephone or see the telephone in the Stoll residence?

A. I saw it, but made no examination of it.

Q. What was its condition when you saw it?

A. Well, it was disconnected.

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Is that the only part you took in the investi-
739 gation?

A. Practically, yes, sir.

Mr. Hogan: That's all, Captain.

STUART R. KERR, called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Stuart R. Kerr.

Q. Where do you live, Mr. Kerr?

A. 203 E. Greenway Boulevard, Falls Church, Virginia.

Q. Where are you employed?

A. In Washington, D. C., by the Co-ordinator of Inter-American Affairs.

Q. In October, 1934, where were you employed?

A. The Federal Bureau of Investigation.

Q. Of the United States Department of Justice?

A. Correct.

Q. On October 10th, 1934, were you in Louisville, Kentucky?

A. I was.

Q. On that day did you receive any call concerning the Stoll residence?

A. I did.

740 Q. As a result of that call, where did you go?

A. Proceeded to the Stoll residence on Lime Kiln Road.

Q. What time did you arrive there, Mr. Kerr?

A. Approximately 6:00 p. m.

Q. Did you go to the guest room or the bed room immediately to the left at the head of the stairs?

A. I did.

Q. What did you see there?

A. You mean the furniture or the appearance of the furniture.

Q. The appearance of the furniture. What did you see there?

A. I observed at least two blood stains on the cover on the bed.

Q. How long did you stay in that room?

A. Probably ten or fifteen minutes.

Q. And what other part of the house did you see or examine?

A. That evening I saw the kitchen and the dining room, and incidentally the living room also.

Q. Did you see Capt. Messmer?

A. I did.

Q. Did you go any place with him?

A. I did.

Q. Where?

741 A. The Louisville Police Department.

Q. And at the Louisville Police Department, did Capt. Messmer turn over to you anything?

A. He turned over to me the ransom note.

Q. Had you seen that ransom note before that?

A. I had.

Q. Had you heard it read?

A. I had.

Q. Where?

A. In the dining room of the Stoll residence.

Q. Who read it?

A. Captain—Sergeant Messmer.

Q. He was a sergeant at that time?

A. That's correct.

Q. That's the Captain in the Army who was here today, is that right?

A. That's right.

Q. When Capt. Messmer turned that note over to you, I'll show you Government Exhibit No. 33 and ask you if that was the note he turned over to you.

A. Yes, that's the note.

Q. What did you do with the ransom note and envelope?

A. I prepared a letter of transmittal to the Bureau and enclosed it.

Q. What do you mean by that?

742 A. A letter setting forth the summary facts of the case up to that date.

Q. You say to the Bureau. Explain to the jury.

A. To the Federal Bureau of Investigation in Washington. I enclosed the letter of transmittal and the original note and envelope in a franked Government envelope, took it to the railway depot and mailed it to the Bureau in Washington for examination.

Q. Is that where the technical laboratory is located?

A. That's correct.

Q. Where did you go then?

A. After mailing the note I returned to the Stoll residence.

Q. How long did you stay there?

A. Until the time Mrs. Stoll was returned, which was October 16th, I believe.

Q. You were there continuously, is that right?

A. Yes, sir.

Q. After Mrs. Stoll returned, did you immediately interview her?

A. No.

Q. Did you see her closely or not?

A. I saw her enter the house, and at that time I left the house and returned to Louisville.

Mr. Inman: You may ask the witness.

743 Cross-examination by Mr. Hogan.

Q. Mr. Kerr, Capt. Messmer, who just left the stand, were you acquainted with him rather generally while he was in the detective office of the City of Louisville?

A. I had had some contact with him on official matters.

Q. Did he occupy any special office with the City Detective Office? Did he do any special types of work?

A. I believe he was at that time setting up certain police laboratory facilities. I am not in a position to say

how far he had gone.

Q. Didn't he have quite a reputation as a chemist?

A. That I wouldn't know.

Q. Did you ever work with him on any other case, other than this one?

A. No.

Q. Did you know at that time whether or not he had any finger-print devices or access to them?

A. No, I can't say that I know what equipment he may have had.

Q. Did the City of Louisville at that time have any finger-printing devices or chemicals?

The Court: If the witness knows. He was not employed by the City.

Q. Yes, if you know.

744 A. I assume they had, but I don't know what equipment they had.

The Court: Never mind the assumption. Just tell what you know, Mr. Kerr.

The Witness: I don't know.

Q. What day was Mrs. Stoll returned?

A. Reasonably early in the evening. It was after dark. The exact time I can't remember.

Q. Now, who had been staying there at the Stoll residence except you, during her absence?

A. Special Agent Wynn and the representative of the Louisville Police Department.

Q. Do you know his name?

A. I don't remember it.

Q. The maid was there, I believe.

A. For a portion of the time.

Q. And her husband?

A. For a portion of the time also.

Q. Did they leave there?

A. I believe they left after the elapse of some days.

Q. Do you know why they left?

A. No, I can't say I do.

Q. Didn't the F.B.I. and didn't you as an agent of the F.B.I. request them to leave when it was known that Mrs. Stoll was coming back?

A. I didn't.

745 Q. Did F.B.I. Agent Wynn order them to leave, the maid and her husband?

A. Not to my knowledge. I don't know what he may have done.

Q. Did this representative of the Louisville Police Department order the maid and her husband to leave when it was known Mrs. Stoll was to return?

A. I have no such knowledge.

Q. Do you know who it was that arranged for the maid's leaving and the husband's leaving?

A. No, I do not.

Mr. Hogan: That's all.

The Court: Members of the jury, we will take a short recess. Make yourselves comfortable. Do not discuss the matter among yourselves or with anyone, or permit anyone to talk about it in your presence. The Marshal will announce a ten minute recess.

A short recess was taken, after which the hearing was resumed as follows:

HARRY J. HILPP, called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

746 A. Harry J. Hilpp.

Q. Where are you employed?

A. Railway Express.

Q. In what capacity.

A. Depot Agent.

Q. How long have you been employed by the Railway Express?

A. Twenty-six years.

Q. Were you on duty at the Railway Express Agency the early morning of October 12th, 1934?

A. Yes, sir.

Testimony of Harry J. Hilpp

Q. On the early morning of October 12th, 1934, did Mr. John Tarrant with other men come to the Railway Express office?

A Yes, sir, about 1:00 o'clock.

Q. What office of the Express Agency was that?

A. Tenth and Maple.

Q. What did they do there?

A. They brought a package.

Q. Did you receive that package for the Express Company?

A. Yes, sir; I did.

Q. In what department were you working at that time?

A. Well, it was a little office there. It was an outbound depot.

747 Q. Were you the depot agent?

A. I was the depot agent.

Q. Were you in charge of all operations there?

A. I was; yes, sir.

Q. Is the money department and valuables department there?

A. Not there, there wasn't at that time, but we received shipments at that depot.

Q. I'll show you Government Exhibit No. 42 and ask you to tell the jury what that is.

A. That's a receipt that we issue to the customers who bring a package to the depot.

Q. What is the waybill number?

A. Waybill No. 3441.

Q. What is the date of that receipt?

A. October 12th, 1934.

Q. What time was that receipt issued?

A. 1:00 a. m.

Q. And to whom was it issued? Who is the shipper?

A. The shipper is J. E. Tarrant.

Q. And the consignee?

A. T. H. Robinson.

Q. What was shipped?

A. A package, seven pounds.

Q. What value?

A. Ten dollar value on here.

748 Q. To what city was that package directed?

A. Nashville, Tennessee.

Q. What did you do with that package, Mr. Hilpp?

A. Placed it in a safe.

Q. What sort of safe?

A. Little portable safe about 20 inches long, 15 inches wide, and about 14 inches deep.

Q. How was that safe locked?

A. It was locked and a little wire seal put through it.

Q. How was the seal placed?

A. What is it?

Q. Was the seal pressed in any way?

A. There is a seal that goes through a little lead seal —a wire goes through two little holes, then back through the lead seal and then pressed together.

Q. Anything else placed in that safe but the package?

A. Nothing but the package.

Q. Did you ever see the contents of that package?

A. No, sir.

Q. What did you do with the safe?

A. Turned it over to Messenger Caldwell, who is a messenger on L. & N. No. 3 between Louisville and Nashville.

Mr. Inman: That's all.

749 Cross-examination by Mr. Hogan.

Q. How many F.B.I. agents accompanied that safe with this package?

A. I only saw two, I believe.

Q. Did they accompany that safe?

A. To the depot.

Q. It was at the depot that you turned it over to Messenger Caldwell, was it not?

A. Yes, sir.

Q. And were those two F.B.I. agents present when you turned them over to Caldwell?

A. I believe they were. I know Mr. Hurley was.

Q. Do you know the name of the other agent?

A. I believe his name was Tarrant or Torrant, or something like that.

Mr. Inman: That was the man who shipped the package?

The Witness: That was the man who shipped it.

Q. Did Hurley stay with that safe when you left there?

A. Hurley went with the safe.

Q. He was with it the last time you saw it?

A. Yes, sir. He got in the car with it.

Mr. Hogan: That's all.

750 Redirect Examination by Mr. Inman.

Q. The other man you thought was an F.B.I. agent was the man who shipped this package, was he?

A. Yes, sir.

Mr. Inman: That's all.

JAMES R. CALDWELL next called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. James R. Caldwell.

Q. Where are you employed?

A. Railway Express Agency.

Q. How long have you been employed there?

A. Twenty-four years.

Q. On October 12th, 1934, were you employed as a messenger?

A. Yes, sir.

Q. On what train?

A. Train 3—L. & N. 3.

Q. Between what points?

A. Louisville and Nashville.

751 Q. On the morning of October 12th did you receive any safe from the depot agent Hilpp at Louisville?

A. I received an extra safe; yes, sir.

Q. An extra safe?

A. Yes, sir.

Q. Prior to your receiving that safe in your custody, had you seen it or seen anyone doing anything with that safe?

A. Well, I checked out for the run that leaves at 1:20. They put a package in it. There was a package put in the safe.

Q. Only one package?

A. That's all.

Q. What was done with the lock on that safe?

A. As far as that part, I can't remember about how the key was handled or anything else, whether it was put in a sealed envelope or not, but I handled it on the value record, on my book is a safe and key, is the way I carried it.

Q. What did you do with that safe and its contents?

A. Turned it over to the money department at Nashville.

Q. Did you go to Nashville with it?

A. Yes, sir.

Q. When did you turn it over to the money de-
752 partment at Nashville?

A. That same morning about 8:00 something.

Q. 8:00 something on the morning of October 12th?

A. Yes, sir.

Q. 1934?

A. Yes, sir.

Q. Were records kept of that transaction?

A. Well, we turned our records over to the route agent then, the book 5024 we used the records on.

Q. Form 5024?

A. Yes, sir.

Q. Did you sign for that safe?

A. It was wrote up on my value sheet; yes, sir.

Q. And you signed for it, is that right?

A. Yes, sir.

Q. Then when you turned it over at Nashville did someone sign a receipt for that?

A. Yes, sir; the money department down there.

Q. What did you do with those records?

A. It was turned in to the route agent, to my route agent, Mr. Shepard.

Q. In the usual course of business?

A. Yes, sir.

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Were you on the train when this safe was
753 delivered to you, Mr. Caldwell?

A. The safe was in my car as I went on the train. It went over on the truck with me, with my other safe.

Q. Where were you when you first saw this safe?

A. Checking out over at Tenth and Maple.

Q. Who was in charge of it at that time?

A. Mr. Hilpp—Mr. Harry Hilpp.

Q. Did anybody else have any connection with it or was anybody else present there?

A. Well, there were some men around I didn't know. A fellow, Mr. Ridge, Mr. John Ridge, he was extra guard on this safe.

Q. Was Mr. Ridge an employee of the Railway Express?

A. Yes, sir; special officer.

Q. Was he accompanying the safe?

A. Yes, sir.

Q. And by its side all the time?

A. Yes, sir.

Q. When you saw the safe, had it been closed and locked?

A. I saw the package before it was put in the safe.

Q. Did you see the safe closed and then locked?

A. Yes, sir.

Q. Were any seals put on it?

A. I say, the best I remember, I don't know about the sealing part and the key, how it was handled.

754 Q. Did Special Agent Ridge accompany you and accompany this safe from Louisville to Nashville?

A. Yes, sir; all the time.

Q. Who else accompanied that safe?

A. One of the federal men, Mr. Hurley.

Q. Anybody else?

A. No, sir.

Q. Just the company's Special Agent Ridge and F.B.I. Agent Hurley?

A. Yes.

Q. And you, of course.

A. That's right.

Mr. Hogan: That's all.

JOHN M. RIDGE called as a witness in behalf of the Government, being duly sworn, was examined by Mr. Inman and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. John M. Ridge.

Q. Where are you employed, Mr. Ridge?

A. Railway Express Agency.

Q. In what capacity?

A. As an investigator, and my title is Assistant Special Agent.

755 Q. Were you employed in that capacity in October of 1934?

A. I was.

Q. On the early morning of October 12th, 1934, were you at the Tenth Street Depot?

A. I was.

Q. What time did you arrive there?

A. About 12:00 o'clock, or about 12:30—between 12:00 and 12:30.

Q. Did you see Mr. Tarrant there that night—that morning?

A. I saw a man with Mr. Hurley, that I later found out was Mr. Tarrant.

Q. Did you know Mr. Hurley?

A. Yes. I had known him before.

Q. And by whom was he employed?

A. How is that?

Q. By whom was he employed?

A. F.B.I. at that time.

Q. What happened there that morning after Mr. Hurley and Mr. Tarrant came to the depot?

A. Well, I saw them put a package in the safe and lock it, and I was told by my General Agent—

Mr. Hogan: Not what you were told, Mr. Ridge.

The Witness: I am speaking about how I come

756 to go with the safe.

The Court: Tell what you did. Don't tell what you heard.

Q. Did you go any place with that safe?

A. I went to Nashville with it.

Q. Who else was with you?

A. Mr. Hurley and Mr. Caldwell.

Q. Mr. Caldwell, the messenger?

A. Caldwell was the messenger.

Q. What time did you leave Louisville?

A. 1:2—.

Q. About what time did you arrive at Nashville?

A. I believe we were on time at 7:30, or close to that.

Q. In the morning?

A. That same morning.

Q. What did Mr. Caldwell do with that package then?

A. He turned it over to our officials at Nashville.

Q. Did you see it any more?

A. After that?

Q. Yes.

A. I saw it when it was taken to the Eighth Avenue office at Nashville.

Q. Eighth Avenue office of what company?

A. Railway Express Agency.

Q. Did you see it after that?

757 A. The package?

Q. Yes.

A. It was taken out and put on the shelf.

Q. In what department?

A. In the on hand department.

Q. After that what happened?

A. After that I was relieved of my duties.

Q. Did you then return to Louisville?

A. Returned to Louisville on No. 6, about 11:30 I think it was, that day.

Q. That same day?

A. Same day; yes, sir.

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Mr. Ridge, after the safe containing this package reached Nashville, did Mr. Hurley stay with it?

A. Yes, sir.

Q. You do not know of your own personal knowledge what was in the package, do you?

A. No, sir.

Q. After it was taken from one office of the Railway Express in Nashville to another office, did Mr. Hurley accompany it?

A. Yes, sir.

758 Q. Was Mr. Hurley with the package when you left Nashville?

A. To the best of my knowledge he was with it at all times until it was placed on the shelf.

Q. The last time you saw the package, Mr. Hurley was with it?

A. We were both relieved at the same time, as well as I remember. Now that's the best of my knowledge at this late date.

Q. I am speaking of F.B.I. Agent Hurley.

A. That's right, F.B.I. Agent, Mr. Hurley.

Q. Did somebody relieve Mr. Hurley?

A. There was somebody there supposed to relieve him. I don't know whether they did or not. There were some other F.B.I. men there that finished the job, I believe.

Q. Other F.B.I. men took up Mr. Hurley's duties?

A. That's right, as far as I know.

Mr. Hogan: All right, Mr Ridge, that's all.

Redirect Examination by Mr. Inman.

Q. Who was in charge of the Nashville office of the Railway Express at that time?

A. W. L. Almon.

Q. Is he still in charge of that office?

A. No, sir. His health wouldn't permit and he
759 is not there now. Mr. Harding, I believe, succeeded him.

Mr. Inman: That's all.

EDGAR N. WOOD called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Edgar N. Wood.

Q. Where are you employed?

A. I am District Accountant for the Railway Express Agency at Chattanooga, Tennessee.

Q. How long have you been with the Railway Express Agency?

A. Twenty-three years and five months.

Q. Mr. Wood, as District Accountant of the Railway Express Agency, do you have custody and control of the records of the Railway Express Agency in this Division?

A. Yes, sir.

Q. Directing your attention to delivery sheets, are you familiar with that term?

A. Yes, sir.

Q. Express term?

A. Yes, sir.

Q. And what is a delivery sheet?

760 A. A delivery sheet is a part of the document that's made up to transport a package from one point to another.

Q. A waybill?

A. Yes, sir, and it is turned into the Auditing Department for audit and accounting.

Q. Is that or not the sheet that would ordinarily be signed by the consignee?

A. Yes, sir.

Q. Showing the receipt of the package?

A. Yes, sir.

Q. Do you have now in your custody, delivery sheets from October, 1934?

A. No, sir; the October, 1934, have been destroyed.

Q. How long do you keep the original in your file?

A. Six years.

Q. Are you familiar with Form 5024, I believe it is?

A. Yes, sir; it is a register of messenger shipments.

Q. Do you have in your custody now the Forms 5024 for October 12th, 1934?

A. They were desroyed three years after that time, sir.

Q. I'll show you this document and ask you whether or not that is an official document of the Railway Express Agency.

761 A. Yes, sir; it is.

Q. What is it, Mr. Wood?

A. This is an "on hand" card, what we term an "on hand" card.

Q. On hand? H-a-n-d?

A. Right, sir.

Q. What is an "On hand" card?

A. That's prepared from a delivery sheet when the package is not delivered immediately and it is retained at the Agency and the original delivery sheet is forwarded to the District Accounting Department for auditing and accounting.

Q. Of what shipment is that "on hand" a record?

A. It is a record of one package, consigned to T. H. Robinson, Ashwood Avenue, marked "Will call," and the "on hand" number is 7185, and the date of the waybill is October 12th, 1934. The waybill number is 3441, one package that weighed seven pounds. The declared value was $10.00 and it was prepaid—that means the charges were prepaid, amounting to 45 cents. It moved from Louisville, Kentucky, on October 12th, and it was shipped by Mr. J. E. Tarrant and received by Railway Express Agency, signed T. H. Robinson, identified by F. C. Bailey, delivered by

W. L. Almon on October 15th, 1934, at 12:30 p.m.

Q Who is W. L. Almon?

A. He was the agent at Nashville.

762 Q. Agency of the Railway Express Agency?

A. Railway Express Agency at Nashville, Tennessee.

Q. File that as Government Exhibit 45.

A. I do.

(The document referred to was handed to the reporter and filed with the record as Government Exhibit No. 45.)

The Court: Is that the original record of the Railway Express Agency, Mr. Wood?

The Witness: That is a copy of the original record, Your Honor. The original record is the delivery sheet, but that is—

The Court: I mean, so far as that itself is concerned.

The Witness: Yes, sir.

The Court: Is that kept in the usual course of business by the Railway Express Agency?

The Witness: Yes, sir. That comes under us and we keep it for the same period as the delivery sheet after it is signed.

The Court: And it was part of the usual course of business of the Railway Express Agency to make such records as that?

The Witness: Yes, sir.

The Court: At the time the transaction occurs?

The Witness: Yes, sir; that's the regular practice, Your Honor.

763 Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Where were you located during October, 1934, Mr. Wood?

A. I was in Chicago, Illinois, at that time, sir.

Q. You did not see Mr. Robinson sign for that package?

A. No, sir.

Q. And you cannot say that that is his signature?

A. No, sir.

Q. Nor can you say that that package was delivered to him.

A. I cannot personally; no, sir.

Mr. Hogan: That's all.

FERRISS C. BAILEY called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. F. C. Bailey.

Q That's Ferriss Bailey?

A. Yes, sir; Ferriss C. Bailey.

Q. Where do you live, Mr. Bailey?

764 A. I live in Nashville.

Q. Tennessee?

A. Yes, sir.

Q. What business are you engaged in?

A. I am an attorney.

Q. Practicing attorney there?

A. Yes, sir.

Q. On October 15th, 1934, did you see Mr. W. L. Almon of the Railway Express Agency?

A. Yes, sir.

Q. Did you know him?

A. Yes, sir.

Q. Where did you see him, Mr. Bailey?

A. I saw him on Church Street near the Paramount Theatre. That's between Seventh and Eighth Avenue on Church Street, in Nashville.

Q. Did you see him again on that day?

A. Yes, sir.

Q. Where did you next see him?

A. I saw him in my office possibly thirty or forty minutes later.

Q. Who else was in your office at that time?

A. Mr. Robinson, Sr. was there. I don't recall whether Mr. Lackey was there at the time or not.

Q. Is that Mr. Thomas Henry Robinson, Sr.?

A. Yes, sir.

765 Q. Did you know him?

A. Yes, sir.

Q. Did Mr. Almon have anything with him?

A. He had a package addressed to Mr. Robinson—Mr. Robinson, Sr.

Q. Was that package or not delivered at that time to Mr. Robinson?

A. Yes, sir; it was.

Q. I'll show you Government Exhibit No. 45, and ask you if the name F. C. Bailey on that was written by you.

A. It was.

Q. Where was that written?

A. It was in my office.

Q. At the time of the delivery of the package?

A. Yes, sir.

Q. Now, examine the signature there, T. H. Robinson. Who signed that?

A. Mr. T. H. Robinson.

Q. Senior?

A. Yes, sir.

Q. Was that signed in your presence?

A. Yes, sir.

Q. And the name W. L. Almon, was that signed in your presence?

A. Yes, sir.

Q. By whom?

766 A. By Mr. Almon.

Q. On what date was that?

A. October 15th, 1934, about 12:30 p.m., according to this ticket.

Q. That's the record on there?

A. Yes, sir.

Q. And what shipment is covered by that record, Mr. Bailey?

The Court: That's in the record once, isn't it?

A. It shows that the shipper was Mr. J. E. Tarrant:

Q. And the consignee, Mr. T. H Robinson, Sr.?

A. Yes, sir.

Q. Was that package actually delivered to Mr. Robinson at that time?

A. It was delivered to him at that time and he took possession of it, but left it there at the office until he could get a suit-case.

Q. At your office?

A. Yes, sir.

Q. How long did the package remain at your office?

A. I would say about two or two and a half hours.

Q. Then what happened to it?

A. Mr. Robinson placed the package in the suit-case that he brought to the office later and carried it from the office, and as I understand carried it—

Q. Not what you understand. Did you see it any more?

767

A. I didn't see the package after that.

Q. On that same day, October 15th, did you have occasion to go to a bank with Mr. Robinson, Sr.?

A. Yes, sir.

Q. What was the purpose of going to the bank?

A. A check was delivered to me, signed by Mr. C. C. Stoll, and payable to me, and I was told—

Mr. Hogan: That's objected to.

A. At any rate, I went with Mr. Robinson to the bank and cashed the check and gave him the money.

Q. How much money?

A. As I recall, it was $125.00.

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Mr. Bailey, I believe you are related to the Charles C. Stoll family?

A. My wife is related to the Stoll family.

Q. In what way is she related?

A. She is a first cousin to Mr. Berry Stoll.

Q. When this package was brought to your office by Mr. Almon of the Railway Express, who accompanied Mr.

Almon?

A. I don't know, sir. So far as I can recall, he was by himself. There might have been a driver with him
768 or someone with him, but I don't recall at this time.

Q. To your best recollection, there was a driver or someone appearing in the role of a driver with him?

A. I am not certain about that. I just can't remember. I knew Mr. Almon, and I, of course, remember him being there. I had known him before.

Q. Was Mr. Stoll, C. C. Stoll, in Nashville at this time?

A. Yes, sir.

Q. Was Mr. Fred Sackett in Nashville at that time?

A. Yes, sir.

Q. What was their purpose or business in Nashville at that time?

The Court: Now, if this witness had any business with them, he might know.

Mr. Hogan: He did. He will know.

A. The purpose of their visit, of course, is in part presumption on my part. I can tell you what happened.

Q. Will you do that, sir?

A. Mr. Stoll and Senator Sackett were registered at the Andrew Jackson Hotel, and Mr. Robinson and his attorney called at the hotel and there was a discussion as to delivery of the package to Mr. Robinson, Sr., and I presume they came there for that purpose, to discuss with Mr. Robinson, Sr. the delivery of the package.

769 Q. Now, Mr. Robinson, Sr. didn't care to have anything to do with that package, did he, Mr. Bailey?

A. As I understand, he didn't care to accept delivery at the Express office, and the plan was worked whereby the package would be delivered to my office and he would accept it at that point.

Q. What did he do with the package when it was put in the suitcase?

A. I can answer that from what I was told by Mr. Robinson, Sr. and others.

Q. No, let's don't have that.

A. I can say this, he carried it from my office. That's all I can answer from my own knowledge.

Mr. Hogan: That's all, Mr. Bailey.
Mr. Inman: That's all.

JOSEPH R. JOHNSON, called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury, please, sir.
A. Joseph R. Johnson.
Q. Where do you live, Mr. Johnson?
A. 4485 Marcy Lane, Indianapolis.
770 Q. During the year 1934, particularly in September and October of 1934, where did you live?
A. 2725 North Meridian.
Q. At that time, how were you employed?
A. I was employed as custodian and rental agent over the two buildings there.
Q. At what address were those buildings?
A. 2725 and 2735 North Meridian.
Q. They are in the City of Indianapolis?
A. City of Indianapolis.
Q. Sometime in September, 1934, did you have occasion to show Apartment 2 to any tenants?
A. Yes. Around September 22nd or 23rd of September, I showed the apartment. A Mr. Bennett brought a man and his wife by the name of Kennedy.
Q. Were you introduced to Mr. and Mrs. Kennedy on that occasion?
A. Yes, sir.
Q. Did you show them an apartment?
A. Yes, I showed them Apartment 2 in Lafayette Court, 2735.
Q. As a result of that showing to them did Mr. Kennedy rent Apartment 2?
A. He rented the apartment; yes, sir.
771 Q. Are you able to tell the jury, point out in the court room, if he is in the court room, this man Kennedy that you rented the apartment to on Sep-

tember 22nd, 1934?

A. Right over there.

Q. Was he accompanied by a woman who was introduced as his wife at that time?

A. Yes, sir.

Q. I'll show you Government Exhibit 25 and ask you to examine that and tell the jury whether that picture fairly and truly represented the likeness of the woman that accompanied him on that occasion.

A. That's the lady I knew as Mrs. Kennedy.

Q. I'll show you a document and ask you to examine that and tell the jury what it is.

A. Well, that's one of our rental receipts, rental forms that we had, when a person rented our apartments, that we tried to get their references and everything on, and it showed the deposit on the rentals and the keys, and, of course, we rented linen at that time, but we didn't show that on this here.

Q. Now, is that rental contract signed by the man named Kennedy that you now identify as Robinson?

A. That's the signature that was signed by Mr. Kennedy.

Q. What did he show that he gave as his name at that time?

772 A. Thomas W. Kennedy or Thomas H. Kennedy.

The Court: What do you mean, Thomas W. or Thomas H.?

The Witness: I can't hardly tell.

Q. With reference to the apartment, what apartment does it show?

A. Shows Apartment 2, Lafayette Court.

Q. And the address?

A. 2735 N. Meridian.

Q. And the rental per month?

A. $47.50 rental per month and a dollar deposit on the keys, total $48.50.

Q. Any reference to any references that he gave?

A. Well, it shows the Union Mixed Asphalt Paving Company of Louisville, Kentucky.

Q. Does it show any other references written in in

pencil?

A. Yes. It shows Storms Building, O. M. Clark, Kosmosdale Portland Cement Company.

Q. And is that signed Lafayette Court Company by H. H. Woodsmall Agency, by whom?

A. By J. R. Johnson.

Q. You are the J. R. Johnson?

A. Yes, sir.

Q. And that it is also signed by—

773 A. Thomas H. or Thomas W. Kennedy.

Mr. Brown: I would like to introduce this as Government Exhibit No. 46.

(The document referred to was handed to the reporter and filed as Government Exhibit No. 46.)

Q. Did Mr. and Mrs. Kennedy—was that apartment a furnished apartment, Mr. Johnson?

A. Furnished apartment.

The Court: You say it was furnished?

The Witness: Furnished apartment.

Q. After Mr. and Mrs. Kennedy moved into that apartment, Mr. Johnson, did you find any place to store their car?

A. Yes. Mr. Kennedy, he asked me if I thought I could find him a garage, and I said I thought I could because we had no garages with those buildings, and finally I got one down the alley. I had Mr. Kennedy to go down and look at it, and he said that was satisfactory. I forget now just what the rent was. I think it was $3.00 a month. I know it was paid.

Q. Now Mr. Johnson, how is that apartment entered?

A. Well, that's entered in a court. You come off this Meridian Street, you come in here and you make a turn this way and this way for a walk. Well, the first entrance is the No. 1 and No. 2 Apartments. Well, the No.

774 1 is in the front after you enter the door and go up a few steps and the door there is No. 2.

Q. Now, with reference to any other entrance, is there any other entrance?

A. Well, there is a back entrance, yes, and you come

in from the alley up to the side of the building on a concrete walk, then you come up a few steps onto a porch, and there is a door there and there is a door here. That door there goes into Apartment 1 and this door here goes into Apartment 2.

Q. Now with reference to the lights, the street lights in the alley, in 1934, would you tell the jury whether the alley was dark or light?

A. Well, that alley was quite dark. All the light practically the alley got was from the Marrott Hotel and the other entrance down at the other street, Twenty-eighth Street, and, of course, we had a light on each landing of the back stairs.

Q. Now tell the jury with reference to the condition of those lights on the landings, whether the lights were on or off.

A. Well, we kept—those lights were turned on by an electric clock, they went on a certain time in the evening and went off at a certain time in the morning. After this thing happened, we had noticed that we had had
775 more trouble with light bulbs being screwed out on these landings.

Q. You mean during that period the lights were unscrewed?

A. Yes, screwed just down out of the socket.

Q. Now, with reference to this apartment, can you tell the jury with reference to the shades in this apartment during this period the Kennedys occupied it?

A. From the time the Kennedys rented the apartment, the shades were pulled down, plumb down to the bottom of the sash, down to the bottom of the sill.

Q. During your attention to the period particularly ending October 16th, 1934. Did you have occasion pretty close to midnight on that night to hear about the kidnapping of Mrs. Alice Stoll?

A. Well, that morning I had went around through—had a lot of paper blowed over the court, and I went through the court and was picking up papers and I happened to pass Apartment 2 windows, which was three windows practically in a row, small windows. That was

the only time I ever seen that window shade raised and it was raised, oh, say about a foot high. There was some lady laying on the davenport with her hand under her head. That's the only party I ever seen around there.

Q. Are you able to tell the jury who that woman was?

A. Well, I don't know.

776 Q. Now on that same day later that evening, on October 16th, did you have occasion to go in that apartment?

A. Yes, along about midnight I was in the bed asleep and three or four men came to my door and knocked—

Q. (Interrupting) Now, let's don't repeat any conversation—as a result of their being there did you go into Apartment 2?

A. Yes.

Q. Tell the jury the condition of Apartment 2 when you went in there?

A. Well, when I went in I saw quite a lot of telephone wire. I saw some adhesive tape—quite a lot of it, made into—

Q. (Interrupting) Made into lattice work?

A. Yes—

Mr. Hogan: That is leading, Your Honor.

Q. What else did you find, Mr. Johnson?

A. Well I found a lot of dirty linen that was left there on the old built-in sideboard or china closet you might call it; it was built in the wall; and a lot of foodstuff.

Q. Now with reference to the closets in that apartment, can you tell the jury what closets there were and what were in each of them?

777 A. Well we had a closet that had an in-a-door bed—that a bed was in; then we had a closet here as you went into the bathroom, and then we had a closet here right over to the side; and this closet in the bath room it looked like it had been used a whole lot. In there I would say that there was a great big greasy spot like somebody's head had leaned up against that wall.

Mr. Hogan: Now that's objected to.

The Court: Objection sustained. Don't give your

opinion of it; just give the facts there as you saw them.

Witness: Yes.

Q. Was there a closet immediately to the left of the bath room?

A. Yes, just before you went into the bath room.

Q. Now, directing your attention to during the period of October 10, 1934, did you have occasion to see Kennedy or Robinson as you now identified him on many or few occasions?

A. I only seen Mr. Robinson after the time he rented the apartment, I only seen him the time that he went down and looked at the garage; and I seen him one day when I was fixing a front screen door.

Q. All right. Tell the jury about that?

A. Mr. Kennedy came down and said that he was going to Sam's subway to get him a beer and that he
778 would like for me to go across with him, and I said no I have got to fix this door up here. Then Mr. Kennedy was gone I would say about 15 minutes and he came back and he said, "Did the mailman come?" And I said, "Yes he came but I don't know whether you got anything or not." And he looked and said no he didn't get any, and that was the last time I ever saw him.

Q. When did you next see this man after that occasion—the man that you now say is Robinson?

A. Last Monday morning here in the court room.

Q. With reference to the bed room, Mr. Johnson, what type furnishings were in the bed room during October of 1934?

A. Well in the bed room we had twin beds and a dresser and a table and a couple of chairs.

Q. All right; with reference to the living room can you recall how the living room was furnished?

A. We had an overstuffed living room suite and a table and some odd pull-up chairs.

Q. Now with reference to the dishes or the linens in the apartment, were they owned by the apartment people or were they owned by the tenants?

A. They were owned by the apartment because I had to buy a new set of dishes and some cooking utensils when

Testimony of Joseph R. Johnson

I rented the apartment to Mr. and Mrs. Kennedy.

779 Mr. Brown: That is all.

Cross-examination by Mr. Hogan.

Q. Mr. Johnson, the first time you saw the man who called himself Kennedy was on September 22d when he rented the apartment?

A. Well now it was in that neighborhood—I would not say it was that date.

Q. Well you saw him the day indicated on that card, didn't you?

A. Yes I did.

Q. Now will you refer to that card and state whether or not it was the 22d or the 23?

A. The 22d.

Q. So now it is fixed in your mind that it was the 22d?

A. Yes.

Q. Now when did you see him next with reference to the lapse of time?

A. Well the next time I seen Mr. Kennedy I think was on Monday morning.

Q. After the 22d?

A. Yes.

780 Q. Monday would be September 24th, wouldn't it?

A. That is the day I ordered the dishes out and taken them over to Mr. and Mrs. Kennedy's apartment.

Q. Well the question was whether or not Monday would have been September 24th?

A. Well now I would not say it was Monday—It has been some years ago, but it was the following 2 days after I rented them the apartment because it taken me that long to get the man and get the dishes out there.

Q. The 22d was Saturday?

A. I believe it was.

Q. I believe your wife was living at that time?

A. Yes, sir.

Q. Did she assist you in the management of that apartment?

A. No; my wife did not assist me at all. My daughter

assisted me with the linens over to Mr. and Mrs. Kennedy's house?

Q. This apartment that is known as 2735 is built into a court fashion, isn't it?

A. Yes; just like a "U."

Q. Yes.

A. And you go in this way and then right around.

Mr. Hogan: Now we have some pictures here.

The Court: Now there was some objection to
781 the changes—were there any material changes there?

Witness: Not in that court.

The Court: Not in Apartment 2?

Witness: I don't know. I haven't seen that apartment since 1935. I moved away from there and I have not had any occasion to go there.

Mr. Brown: I will show him our exhibits and ask him.

Mr. Hogan: All right.

Redirect Examination by Mr. Brown.

Q. Suppose you examine Government Exhibit No. 12 and see if that fairly and accurately portrays the outside of that apartment? The apartment building at 2735 North Meridian?

A. This must have been taken more from the 28th Street.

Q. Do you recognize that picture?

A. Yes.

Q. And I show you Government Exhibit No. 11, being the picture of two garages, and ask you if that fairly and accurately represents the garages back in an alley behind apartments 2735 and 2725?

A. No, there are no garages back of there. That would be 2709.

782 Q. Well, back of 2709.

A. Now this is the garage that I got for Mr. Kennedy.

Q. I show you government exhibit No. 13, and ask you if that fairly and accurately represents the outside view of the bathroom window of Apartment No. 2?

A. I should say I think so. It looks quite like it. Of

course the door don't show here much.

Q. Now I will show you government exhibits Nos. 14, 15 and 16 and ask you to examine that and tell the jury whether or not those 3 views fairly and accurately represent the closet to the left of the bath room that you have talked about?

A. Yes; they do.

Q. I will show you government Exhibit No. 18 and ask you if that fairly and accurately represents the back of the apartment at 2735 North Meridian?

A. Yes; that is the back stairway of the apartment but that isn't the stairway where there would be apartments Nos. 1 and 2.

Q. No, that is the back of it?

A. Yes, that is from the alley.

Q. Now I show you government Exhibit No. 17 and ask you if that fairly and accurately represents to the best of your recollection the far corner of the living
783 room from the door?

A. Yes; there is the fireplace and the built-in bookcases and the davenport we had in there.

Q. I will show you government Exhibit No. 19 and ask you if that is the basement door in the alley back of the apartment at 2735 North Meridian?

A. Yes, sir.

Q. I will show you government Exhibit No. 20 and ask you if that fairly and accurately represents the back porch and the bath room window?

A. Yes, sir.

Q. Then I will show you Government Exhibits Nos. 21 and 22, and ask you if that represents fairly and accurately the ariel way between the 2 apartments, 2725 and 2735 North Meridian taken from a point looking toward Meridian Street?

A. That would look like it from the alley, taken from the alley looking West.

Q. Toward Meridian?

A. Yes.

Q. I will show you government Exhibit No. 23 and ask you if that fairly and accurately represents the back

of the apartments 2725 and 2735 taken from a point near the Marrott Hotel?

784 A. Yes; this is the Westminister and this is the LaFayette court building.

Cross-examination Continued by Mr. Hogan.

Q. Now, Mr. Johnson I will stand here beside you so as not to be between you and the jurors.

A. Well, let me put my glasses back on again.

Q. I show you photograph marked defendant's Exhibit No. 1 and ask you if that fairly and accurately represents the court of the LaFayette Apartment as of October 1934?

A. Well that is the same in there. Here is the apartment here.

Q. That is just a different picture?

A. It represents the 2 floors. It is the same court, only this shows the vines and everything that the other one didn't.

Q. But the building is the same?

A. This building is practically the same. I don't remember about this archway over the door.

Q. But the windows to the apartment are the same?

A. Yes; there are the 3 windows.

Q. All right. Now I show you this Exhibit No.

785 2, defendant's exhibit, which purports to portray the size and condition and layout of the living room of that apartment No. 2. Is that just about the way that living room looked in 1934—October?

A. Well I wouldn't say it did because the furniture ain't placed in there like it was.

Q. No, I didn't mean the furniture. I mean the walls and the windows?

The Court: The size and the location of the windows?

Witness: Well I don't know what size that would be, Judge.

The Court: But does it appear to clearly portray the windows?

Mr. Brown: We have definite measurements of the size. But I think it does accurately portray the interior

view of the apartment.

Witness: Yes it does.

Mr. Brown: I certainly have no objection to that.

Q. Now I show you defendant's exhibit No. 3. This one has been cut in two but it purports to show the windows in the bed room.

A. Well it don't show no radiator under the windows there.

786 Q. Well that is in the bed room, now?

A. Oh, the bed room.

Q. Was that the condition of the windows in that apartment in October 1934?

A. The windows are the same thing. I don't know if there were 3 windows in the bed room or not but I guess there was because you have got a picture of it.

Q. Yes.

The Court: The picture was introduced not to show what was shown through the windows. I think that was agreed on, wasn't it?

Mr. Hogan: Yes.

Q. I show you defendant's Exhibit No. 13, which purports to show a view taken from in the living room of Apartment No. 2 and showing into the bath room and into the living room. Was that the situation in October 1934?

A. Yes.

Mr. Hogan: I would like to introduce that as defendant's Exhibit No. 13.

(The picture above described was handed to the Reporter and filed with the record.)

Mr. Brown: I will stipulate, in the interest of saving time, that they represent the condition of the apartment as of October 1934.

787 Mr. Hogan: I would like to introduce defendant's exhibits beginning with No. 4 through 13, inclusive.

(At this point the exhibits are handed to the Reporter, marked Defendant's Exhibits Nos. 4 through 13, and filed.)

Testimony of Joseph R. Johnson

Q. Mr. Johnson, do you recognize defendant's Exhibit No. 11 as showing the composite view of the La-Fayette Apartments?

A. Yes.

Q. And you have already identified No. 13 as showing a view into the bath room and some view into the bed room.

A. Yes.

Q. Do you recognize Exhibit No. 8, defendant's exhibit, as showing the view taken of the sidewalk looking towards the back porch to Apartment 2? Or the back porch that serves Apartment 2 and 1?

A. Yes. It does not show the door going into that apartment.

Q. No. I will show you another view that shows the door. Now I will ask you to look at this No. 8 again and tell the jury about these 2 windows that are shown there?

A. This window here is the bath room window in what we call Apartment No. 1 and this one here is the bath room window in Apartment No. 2.

788 Q. This window here is what?

A. The kitchen window of apartment 2.

Q. That is slightly higher?

A. Yes, the kitchen sink was under that window in the kitchen.

Q. What is this group of windows just beyond the window in the kitchen?

A. That is in the bed room.

Q. I believe there are 3 windows shown there?

A. I don't know whether there are one or two.

Q. The other view showed 3 windows?

A. Yes.

Q. Referring to Exhibit No. 3. Now this back porch on No. 8, there are stairs leading up to the upper apartments off of that porch and also stairs leading down to the ground off of that porch. Is that correct?

A. Yes, from the walk here up to the first porch landing it is across the porch and up the steps to the second floor. There was only two floors to the apartment.

Q. Now No. 9. Do you recognize that as being taken

in the bed room and looking across the kitchen floor to the porch floor in the rear of these apartments 1 and 2?

A. Yes; this here door between the bed room and
789 the kitchen was one of those doors that worked both ways. Now you have got a back door leading out on the back porches. This would be the kitchen.

Q. This box holding the kitchen door open would be the milk box?

A. That is what it looks like.

Q. And the bath room windows for apartments number 1 and 2 are shown on No. 9?

A. That is for 1 and 2.

Q. If you look at No. 8 I think it will show you that this bath room—these bath room windows are side by side that is one window for each bath room in each apartment?

A. Yes; but it just don't show that here plain.

Q. Now, do you recognize Exhibit No. 10 as showing the walkway and the space and the distance between the apartment buildings at 2725 and 2735 North Meridian Street?

A. Well the picture shows to me, it looks like it is rather narrow through there than what it really is. Of course, I guess that is on account of the walks.

Q. The distance has already been testified to. The question is does that show the 2 buildings?

A. Yes.

790 Q. And that shows the windows of these various apartments opposite each other, doesn't it? It isn't exactly opposite, but there are windows close there?

A. Yes, there are windows there in both buildings.

Q. Now this Exhibit No. 12, do you recognize that as a view taken from the back porch looking into the kitchen and prominently showing the bath room window of apartment No. 2?

A. Yes; there is our little porch light.

Q. You recognize the porch light?

A. Yes.

Q. Tell the jury where that porch light is located?

A. Right between the 2 windows.

Q. The 2 bath room windows?

A. Yes; and those are the lights that I had such a hard time to keep burning. When the clock turned them then they came hollowing that somebody was going to fall down the back stairs and get hurt.

Q. Mr. Johnson, I saw something here in the top of No. 12—

A. (Interrupting) That is that they put their trash in.

Q. A big trash can?

791 A. Yes; a big can. Both apartments put trash in the big can and each one of them then had a little garbage can.

Q. The people using the apartment No. 1, would they go out on the back porch if they had occasion to put their trash in?

A. Yes.

Q. Who collected the garbage?

A. They had a colored fellow who came around and gathered up all of the garbage in this particular apartment. In the Wesminister we had an incinerator. The helper I had there would take the trash and burn it in the incinerator in the furnace room.

Q. Who is this garbage man you speak of?

A. I don't know. Just anybody who had hogs. He would collect the garbage so he could have the slop for his hogs.

Q. And who picked up the paper trash you had there?

A. Dolmar Jones. He is in the Army but I don't recall the other one.

Q. Did you have 2?

A. At different times. There was not enough there so we needed two. But sometimes when there was no one there but me, I did it.

792 Q. So you and Dolmar Jones and what was the other fellow's name?

A. I don't remember his name now.

Q. So one of you three would alternate in going there and picking up this trash. Is that what you mean to say?

A. Yes.

Q. And about how often would you say you went

and picked up the trash?

A. I can't say that. Sometimes I wouldn't go once a week and sometimes I wouldn't go one time in two weeks. One of us had to get it.

Q. How often was it picked up?

A. It was supposed to be picked up every day.

Q. And of course you saw that it was done either personally or you saw that it was done?

A. Yes.

Q. Do you recognize No. 7 as being the bath room fixtures?

A. Well that is just about what I would think it was. I think that is just about as good a picture as I have ever seen of it.

Q. That is a pretty good piece of photography?

A. Yes.

793 Q. You have been in there several times?

A. Yes, we cleaned it several times. I guess we had to be in there to clean it.

Q. Do you mean it was your job to do that?

A. Yes; first one and then another would move out; and if we papered it we had to go in there and clean it up and clean off the tile.

Q. You just had to do everything there?

A. Yes, put near.

Q. You were chief cook and bottle-washer there?

A. Put near.

Q. It is a big job to manage one?

A. I should say it is.

Q. Now in this bath room, we will talk about that.

A. Yes.

Q. Here is the bath room? Here is the basin?

A. Yes.

Q. That has got a faucet through which you can run hot and cold water?

A. Yes.

Q. And this is the toilet consisting of a water box and a bowl?

A. Yes.

Q. That of course was operating all the time?

794 A. Well I never had no complaints about it.

Q. There was a steam radiator in there?

A. Yes.

Q. And a wash basin?

A. Yes.

Q. And a bath room window?

A. Yes, and the cabinet.

Q. And a medicine cabinet?

A. Yes.

Q. And a light?

A. Yes.

Q. Now looking at the West wall of that bath room, what is on the other side of that wall?

A. On the other side of that wall would be another bath room.

Q. In other words, the bath room to apartment No. 1 would just be back to back with the bath room in apartment No. 2?

A. Yes.

Q. Now was that done to facilitate or economize on the plumbing?

A. Now you are asking me a question that I don't know anything about. I don't know anything at all about plumbing.

Q. You didn't build the place and you don't know?

795 A. No.

Q. But was this other bath room comparable in size and shape?

A. Just the same.

Q. And it had a window as shown on some of the other views just a little bit away from this window in here?

A. Yes; this window away from this back wall. It was not right up against the wall. And the other one would be about the same distance on the opposite bath room.

Q. Suppose you take this No. 12 and sort of estimate the distance between the two windows?

Mr. Brown: I don't know whether you can ever estimate distance from a photograph. We have a map here of that drawn to scale.

A. I think those windows would be about 24 inches apart, just judging from the distance.

Q. About 2 feet apart?

A. Yes.

Q. The basin right under this medicine cabinet as shown in No. 7 shows both faucets, one hot and one cold?

A. Yes, two faucets.

Q. And that water was turned on and running, of course?

A. Oh yes we had hot and cold water the year 'round.

796 Q. Now look at this No. 7 again showing the interior of the bath room. I see these pipes connected with the steam radiator appear to go into the side of the wall; where do those pipes lead to?

A. Well where would you get your steam from?

Q. Into the basement?

A. Yes; they would have to lead to the basement and in the basement there we had these different lockers for the tenants to store stuff in and they were covered with this asbestos so the water would not cool off before it was distributed to the different apartments.

Q. That would apply to down in the basement, but these pipes are not covered?

A. They are ordinary steel pipes.

Q. It is bound to connect up with the furnace so that the heat may travel through them, or the hot steam?

A. Yes.

Q. Now I show you No. 6 for the defendant. Do you recognize that as being the bath room door closed and this linen closet. Here is part of the bath tub?

A. You mean on the inside of the bath room?

Q. That's right?

A. Yes.

Q. Now that shows the door closed?

797 A. Yes.

Q. Is this the end of the bath tub down there?

A. Yes.

Q. And this is a cabinet showing 4 doors?

A. Yes and that was a door. I don't know if the

cabinet had 3 or 4 doors but that looks like the layout of it.

Q. Now that bath room it was—have you got your glasses there?

A. Yes. I have got them right on.

Q. Does that show the latch on that door? You recognize that don't you? That thumb latch right there?

A. Yes it shows it is closed and thrown over.

Q. And you could go in and close the door and throw that thumb latch and lock the door, couldn't you?

A. Yes.

Q. If you wanted privacy and wanted to stay in there you could lock the door?

A. Yes.

Q. Is that a strong latch?

A. I should think it would be.

Q. It would be sufficiently strong to keep from someone coming in there?

A. I don't know as it would do for an outside door. If you had the door closed and had the lock throwed there and if you wanted to go in there and found it
798 was locked I don't know how strong the lock would be.

Q. That would be to keep somebody from getting in there?

A. Well that is what they usually use them for.

Q. Now No. 5 shows the bath room window in the bath room we are talking about, showing the steam radiator with the bath room window open. This bottom sash is open. Do you recognize this as the trash can setting on the outside there?

A. Yes.

Q. That is a glazed glass?

A. Yes, a florentine glass that you can't see through.

Q. I will take your word for that; I have never heard of that.

A. That is what they call it. So you can't see through it.

Q. Did the other apartments have the same size windows?

A. Yes.

Q. I will show you Exhibit No. 4 which is another view of that same bath room window. It does not show the top of the radiator but it does show a close-up view of the sill and it shows more of the porch, more where the trash can is setting on the porch. Do you recognize
799 that?

A. Yes; they must have set their camera up there close.

Q. And that is the similar situation with reference to the other bath room windows in those apartments. Is that right?

A. Yes; I think they were all the same thing.

Q. Now, Mr. Johnson, you have mentioned putting some soiled linens somewhere a moment ago in your testimony. Was that this cabinet right here?

A. Well, let's see the bed room.

Q. Well that is as much of the bed room as I can show you.

A. Well there was a built-in—what would be an old-fashioned china closet in there, and then the top was up and here is the top of the cabinet. In there is where I found the dirty bloody linens. Now in this cabinet this door was open where I seen—maybe I had better not say that?

Q. Maybe you had?

A. Well that was where I seen the wiring and the tape?

Q. Anything else?

A. That is all.

800 Q. Now, these cabinets here, are they fairly wide?

A. Well they are regular linen closets that would be in a bath room. I would say it would be about 20 or 24 inches. I don't know. Just the exact dimensions of it I wouldn't know. It would be between the door and the wall of the bath room as you went into the bath room.

Q. Maybe I can get a better one here that would better serve the purpose. Now take Exhibit No. 13 and take Exhibit No. 6. Now, Mr. Johnson, I want you to tell me this: If you were in this bath room here with this door

open, and did not want anybody to see you, could you step over here to where this linen closet is and get out of view? Now look at this one and look at that one.

A. Well I don't hardly think you could.

Q. Now look at that one, isn't there room enough for a person to stand in front of that linen cabinet?

A. Which one?

Q. This one?

A. The way it shows there—but I don't know. I would say this one would be around about 20 or 24 inches from this facing to the wall and then there is another one here.

Q. How far does this cabinet extend out? In
801 other words how wide is the cabinet—how far does it extend out from the wall?

A. Now to answer that question truthfully I don't know if it sticks out from the wall one bit or not.

Q. How wide are you across the shoulders?

A. I will leave you to guess at that.

Q. All right. Stand up here and we will get the tape line and measure you.

(At this point counsel measures the witness across the shoulders.)

Q. You are a little less than 20 inches wide. Now if you are less than 20 inches wide and you think that cabinet is 24, there is enough room for you to get in front of that cabinet with some inches to spare?

A. Yes; if that cabinet is 24 and I am 20 I would say that. You know that.

Q. Now, Mr. Johnson, didn't you have some trouble with some of those other apartments and find it necessary on occasions to go either in or out of the bath room windows?

A. Yes; over on the 28th street side.

Q. You got through there with your body, didn't you?

A. If I got in there I had to get through with the body; yes. Yes, I had to crawl in several times to get in if they would lock the key up inside and that was the only way I had to get in there. I had to take a ladder
802 over there.

Q. How often would you say you had to go through there?

A. I don't remember; that has been a long time ago but at that time I thought I had to go in there pretty often. There was one particular party that I had to go in for pretty often.

Q. How tall are you?

A. Supposed to be 5 feet 11½.

Q. How much do you weigh?

A. Now?

Q. Did you weigh then?

A. I think I went down to 169 pounds there.

Q. You got down pretty skinny, didn't you?

A. I sure did.

Q. How much do you weigh now?

A. 185.

Q. You are 16 pounds heavier than you were in 1934, aren't you?

A. Yes. Because I had a lot of firing to do and we were cleaning apartments, too, you see.

Q. You mean they were working you pretty hard then?

A. Yes, they did.

Q. You were on the job all the time?

803 A. Yes.

Q. These tenants kept you busy running from apartment to apartment all the time?

A. No, I wouldn't say that. We didn't paper every apartment and we didn't clean every apartment.

Q. Tell us about the cleaning. Who cleaned those apartments?

A. We had different fellows to go there and paper and then we had another fellow from a different building to go over and work over there and I would jump in and clean kitchens, etc.

Q. I mean about maid service?

A. There was no maids there. I and the other fellow did all the work.

Q. You were the old maid?

A. Yes.

Q. What did your services consist of?

A. On Friday evening maybe he would take the vacuum sweeper and run it up and down the halls in the Westminister Building. Then on Saturday in the vestibules of those apartments we would sweep them out and sometimes mop them out.

Q. About the interior of the apartments?

A. We never went inside the apartments, from
804 the time they rented them until vacated.

Q. But you cleaned the vestibules?

A. Yes we cleaned the vestibules down to the foot of the steps.

Q. And would that situation hold good for all of the apartments or all of the vestibules in that wing?

A. Yes, it was supposed to be every entrance. Every entrance was supposed to be cleaned.

Q. Every Friday?

A. Yes, every Friday or Saturday.

Q. And you either did it yourself or somebody else did it for you?

A. Yes.

Q. Was that the man who usually picked up the paper or trash?

A. Yes.

Q. How many assistants did you have?

A. I never had more than one at a time. We both worked together. Sometimes I didn't have no help. Sometimes I had to do it all by myself. In the winter time we cleaned it more than ever because we had lace curtains up to the windows and doors and in the winter time we had to take those curtains down more oftener than we did in the summer.

805 Q. What curtains do you refer to?

A. I don't know if they are there now but they were on rods and we would put them on the rods and on the side panels on the door.

Q. What door are you speaking of?

A. The front door.

Q. The entrance door?

A. Yes.

806 Q. Now, with reference to this entrance door to

this apartment, what type of door was that? Was that a wood or glass door? I am not talking about the outside entrance. I am referring to the apartment entrance door. Was it a door similar to these closet doors?

A. You mean coming in from the hall?

Q. Yes, right up here?

A. It was a solid wood door.

Q. Like shown on this?

A. Well, I wouldn't say it was a straight panel door like that, I wouldn't say now, I don't remember whether it was or not, but I should think it would be an ordinary glass door.

Q. Was it thicker than the panels of this closet door or thinner?

A. Oh, you would naturally have it thicker.

Q. Mr. Johnson, have you ever in making your rounds cleaning the vestibules—first, I will ask you, when you clean these vestibules, that would put you opposite the entrance door to the apartment, would it not?

A. No, we didn't do that. We never went up on that landing. The people that lived—I don't know now, whether there was two or three or four steps to go up to that landing. That would be the landing or the hall. We only cleaned the steps down and this vestibule here. That hall, ever who lived in Apartment 1 and ever who

807 lived in Apartment 2 would have to clean that.

Q. To get this properly straightened out, you would go in that outside entrance door.

A. Yes, sir.

Q. And then you would be in a little vestibule there.

A. That's it.

Q. Take a few steps back and you would run into these four steps that you just told about.

A. Yes.

Q. Now those steps led up to this landing or platform that served Apartment 1 in this particular case and Apartment 2.

A. Yes.

Q. You or your helpers would clean those four risers leading up to that landing.

A. Take a brush—

Q. Take a brush and wash them down?

A. Yes.

Q. Have you at times when you were cleaning those four steps, heard people talking in those apartments?

A. Never did.

Q. You didn't bother about other people.

Mr. Brown: I think he has answered he never did.

Mr. Hogan: I will withdraw that.

808 Q. Now, did you clean these four steps serving Apartment No. 1 and 2 for this apartment at 2735, during the month of October, 1934?

A. I couldn't say. I couldn't say. I don't know.

Q. Well, you regularly cleaned them?

A. Well, I could have cleaned them, yes.

Q. And you now believe that you did?

A. Well, no, I won't say. I wouldn't say yes or I wouldn't say no because I don't remember, and there is no use of me saying yes or no because I don't know about that.

Q. Were you ever away from that apartment building during the latter part of September or the first week of October, 1934? I mean, away on a visit for any time?

A. No.

Q. You were there then.

A. I was there, right there, with my wife—my wife and daughter.

Q. You spoke of your daughter as taking care of the linens. What would she do?

A. Well, she didn't take care of them. I spoke of her helping me carry the linen over to the apartment. The linen we had all in our storage room there, that we kept there, and, of course, that linen we rented out for $2.50 a month. Of course, the tenants, however, who rented that linen had to pay for having the linen laundered.

Q. Did your daughter collect that soiled linen
809 and send it to the laundry?

A. No, we never seen the linen from the time I rented it to a person until they moved out, and when they were going to move out then we went over and checked to

see that we had everything that belonged to the apartment, the dishes and everything else, the same way with the linen.

Q. Now, in passing by this Apartment No. 2 after the time that you say this man Kennedy rented it from you, did you observe that those shades were drawn?

A. Well, yes. They was drawn all the time practically, but that wasn't nothing, it wouldn't create any suspicion in anybody's mind because a person has got a perfect right to keep their shades down or be away from home. I wouldn't know whether they were there or wouldn't be there.

Q. Did I understand you to say the shades in the bed room and the living room were drawn or just in the bed room?

A. The bed room shades were down and the living room shades was constantly down.

Q. You had two ways of seeing the shades down, by going between the two buildings, that is, between 2725 and 2735. You observed the shades were down in the bed room.

A. That areaway between there, the leaves and the paper would blow up through there, and every week we cleaned that, and you could see, of course I didn't
810 stand there and watch to see if every shade went up or went down. At that time I accidentally went by they would be down, and some of the other apartment shades would be down.

Q. You made a mental note that those shades in that bed room were down.

A. Well, not particularly the bed room. I never paid much attention to it. I noticed the shades was all down. I taken it for granted that the parties wanted the shades down and burn electricity. That was all right because electricity went with the building.

Q. The electricity went as part of the rental?

A. The Electric bill was put—the electric went right along with the rental.

Q. Didn't you complain if they burned electricity in the daytime?

A. No. No. We never complained about anything because if their bill went over $3.50 they had to pay it.

They had different meters.

Q. Up to $3.50 you didn't care what they did, so far as the light burning was concerned.

A. No.

Q. Now, out in the court there, did you in going from these various apartments notice that the shades to the living room of Apartment No. 2 were likewise drawn?

A. When I had occasions to go through, maybe I
811 would have to go to Apartment 11 or some place, you just naturally glance along. You see, of course, I never paid much attention to that, I never paid any attention to it, only the one morning particular when I went through there, that was in October about the day that this thing happened, and the window shade was up I would say twelve or thirteen inches.

Q. You say the day this thing happened. What do you mean by that?

A. Well, the night that the Federal men come there, they came there that night.

Q. And the morning of that?

A. That morning, and then that night the Federal men came there.

Q. Did you see one or two women in there when you saw this shade?

A. I just seen a lady laying there with her hand—her head on her arm, like this.

Q. Did she have yellow hair or red hair?

A. Well, I never paid—now I didn't stand there because I had no business standing there. I had no business standing there watching people through their windows.

Q. As between black hair and a different color hair, could you say?

A. I couldn't say.

812 Q. You did not see two women?

A. No. No.

Q. How much of the sofa or divan could you see?

A. Just about the roll arm, come up, you know how the arm of a davenport is.

Q. This woman was just reclining there?

A. Just like she had laid down and was tired, just like

you would lay down, put your arm under your head and rest.

Q. Didn't see any man in there?

A. I didn't stop that long.

Q. What time of the morning was this?

A. That was along, I should say, about 10:00 o'clock in the morning, 10:00 or 11:00 o'clock in the morning.

Q. Now, who lived in Apartment No. 1 at that time?

A. Well, there was a family by the name of Aldridge.

Q. What was his business?

A. He was superintendent for the Adams people there.

Q. Who lived in the apartment on the ground floor back of Apartment No. 2?

A. Now, I just don't remember that woman's name. I won't try to guess at it. I had too many tenants to keep up with them. I couldn't remember all those tenants.

Q. Would you remember this name because it is an odd name—did a man by the name of Van Lanningham live there?

813 A. Well Van Lanningham lived across the court, over in Apartment 10—Mr. Van Lanningham and his wife and little baby.

Q. Who was Mr. Van Lanningham?

A. Well, Mr. Van Lanningham was connected with the F.B.I., finger-print expert.

Q. Is it not true that there was another F.B.I. agent that lived in that apartment?

A. Not as I knew of. If he did, he never did tell me or I didn't know it.

Q. But you knew Mr. Van Lanningham was an F.B.I. agent.

A. I did in a roundabout way. He never told me, his wife never told me, but in a roundabout way I did know it.

Q. Is No. 10 across the court from No. 2?

A. Yes, it is across the court, but down in that far corner.

Q. If he lived in No. 2 he could look diagonally across and see No. 2, is that correct? If he lived in No. 10 he could look diagonally across and see No. 2?

A. Well, I don't know whether he could see the windows. Just like you look across there, you can see windows, yes.

Q. If he went in the entrance to No. 10 he would pass by there.

814 A. Well, Mr. Van Lanningham was very seldom at home. He would maybe come home and be gone four or five weeks at a time, and his wife and baby would be there.

The Court: Mr. Hogan, let me suggest this. If you can finish with this witness within the next five or ten minutes, we will go ahead, but unless you can I think we had better adjourn. We have gone some half hour more than our usual closing time already. I was in hopes you would get through.

Mr. Hogan: I think I am about through with him, if Your Honor please.

Q. Now, Mr. Johnson, were you taking the Indianapolis papers along about this time?

A. When?

Q. In October, 1934?

A. Well, yes. We practically got the Indianapolis News for the last thirty years.

Q. That's a daily newspaper published in Indianapolis?

A. Afternoon paper; yes, sir.

Q. You read that paper from day to day, I take it.

A. Well, no, I don't even read it now day to day, and I know I didn't read it then from day to day.

Q. Had you read anything in that paper that there had been a kidnapping in Louisville?

A. Well, I just don't recall whether I did or not,

815 but you read a little thing, you might sometimes read something and you wouldn't know anybody interested in the thing, and you just throw it aside. I might have done that. I don't know.

Q. These blinds being down in that apartment on both sides didn't arouse your suspicion in the least?

A. No. I have still—out there where I am at, I go by apartments every day and the blinds are down. They don't bother me one bit. I don't know whether they are

at home or gone on a vacation. The only time it bothered me there was when I would have to go and collect rents. Out here I don't have to bother about collecting the rent.

Q. Didn't it impress you as being a little bit strange that the shades would stay down from September 22nd to October 16th?

A. Now, I don't know whether they were down all from the 22nd to October 16th or 17. I know they were down every time I had occasion to go through the court or up that areaway there.

Q. With reference to the other tenants, did they likewise keep their shades down on both sides of the apartment?

A. Some of them kept one shade pulled down, some kept some shades just halfway, just pretty nearly any way a woman wanted to keep her house darkened. Now,
816 in the front building there, Mrs. Aldridge, she kept her, what we call the sun parlor, took the whole front in, she kept her shades down pretty nearly to the bottom all the time in the summer.

Q. This was not in the summer.

A. Well, September or October, it wasn't cold. We just started up the furnace I think about a week or ten days before that. We wasn't giving them full heat then. We would put a little steam on and then shut the stoker off.

Q. But the furnace was being operated to a limited extent in October.

A. Yes, because they had to have steam for the tenants that had small children, but we didn't keep it up very long.

Q. Mr. Johnson, did you make a statement to the F.B.I. agents about this matter?

A. Yes, sir.

Q. A lengthy statement?

A. Quite a lengthy statement, yes.

Q. How many pages?

A. Well, I didn't make no seventeen pages, Mr. Hogan.

Q. Why do you mention seventeen?

A. Well, I know what you are going to ask me.

Q. Tell the court and this jury. We haven't any-
817 thing to hide. Let's see about it.

A. When you were out to the house, I told you I didn't want to make any statement, and you said why. I said, "Well, I made the statement to the F.B.I." You said, "Did you? Was it very lengthy?" I said, "Well, yes, about seventeen pages." Of course, I was setting in my own living room and I could say pretty nearly anything then.

Q. You go on the theory that dog fight acts better in his own back yard than in somebody else's yard.

A. Well, I halfway believe it.

Q. Seriously now, just how many pages did you give?

A. I really don't know whether it was one page or two pages, but I know at that time I had all the work on my hands and I wasn't feeling any too good anyhow, and when the F.B.I. man taken my statement we went up to the Marrott Hotel and they notarized it, and I don't know, it was taken down in shorthand or on the typewriter, I don't know how many pages it was, I wouldn't try to say whether it was one, two, three or four, or how many.

Q. Let's get along pretty quickly. When did you give that statement?

A. Gave that statement, I think it was the next day after the F. B. I. men came there the next morning, 1934, around October. What day was it?

Q. It would be October 17th then.

818 A. Well, the next morning.

Q. 1934. To what agent did you give that?

A. Well, I don't know that. I think his name was Spears. I think that was his name.

Q. Where is he located?

A. I couldn't say. I never asked the gentleman and I don't know. I don't know whether he was located in Chicago, New York, or Louisville, or Indianapolis, or where .

Q. Did more than one agent take it or just one?

A. No, just Mr. Spears.

Q. You and he were in the room alone?

A. Yes.

Q. You spoke of the Morat Hotel. What is that?

A. That's a big family hotel there, right up above these apartments. I don't know just exactly if I could tell you how many floors there are in that hotel, but it is quite a refined hotel. The Governor's mansion is just back of it. It is out in the residential section of the city.

Q. Your apartment was in a rather nice neighborhood then.

A. Oh, yes. Yes.

Q. Directly across the street in front of this 2735 is another apartment or apartment hotel.

A. Yes, a nice apartment there.

Q. That's a rather tall building.

819 A. Yes. That's right on the corner of Twenty-eighth and Meridian.

Q. How many apartments were in this 2735, this horseshoe affair?

A. Sixteen apartments.

Q. Were they mostly rented at that time?

A. When I rented this apartment, that was the only apartment I had vacant at that time.

Q. In other words, there were tenants in all of those sixteen apartments.

A. Yes.

Q. Tenants up above this apartment too?

A. Yes.

Q. And behind it and in front of it.

A. Yes.

Q. And across the way?

A. Yes.

Mr. Hogan: That's all.

Mr. Brown: That's all, Mr. Johnson. You are excused.

The Court: Members of the jury, we will suspend for the day. Do not discuss the matter among yourselves or with anyone, or permit anybody to talk about it in your presence. We will convene tomorrow morning at 9:30.

820 Met pursuant to adjournment and continued with the trial as follows:

The Court: All right, we are ready for the next government witness.

Testimony of Sam K. McKee

SAM K. McKEE was called as a witness by the plaintiff, and after having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?
A. Sam K. McKee.
Q. Where do you live?
A. In Chatham, New Jersey.
Q. Where are you employed?
A. Special Agent in Charge of the Federal Bureau of Investigation.
Q. In what office?
A. Newark, New Jersey.
Q. In 1934, October 1934, were you a Special Agent of the Federal Bureau of Investigation?
A. I was.
Q. Where were you assigned at that time?
A. Chicago, Illinois.
Q. In October 1934 were you assigned to the investigation of the Stoll kidnapping?
821 A. I was.
Q. And in what town were you on the 16th of October 1934?
A. Indianapolis, Indiana.
Q. On that day, the 16th of October, 1934, did you go to any particular apartment there at Indianapolis, Indiana?
A. I did. I went to an apartment at 2735 North Meridian Street.
Q. What was the number of the apartment?
A. Apartment No. 2.
Q. What time did you arrive there?
A. Just after dark.
Q. What was the purpose of your going there?
A. I was sent there along with two other Special Agents for the purpose of ascertaining whether Thomas H. Robinson Jr. was at the apartment or in the vicinity of the apartment.
Q. Did you enter that apartment?

A. I did.

Q. Who was in charge of the Special Agents who went to that apartment?

A. I was.

822 Q. When you entered the apartment, what did you find? Was anyone present?

A. There was no one present.

Q. What did you find there?

A. There were numerous articles in the apartment, wearing apparel, both for males and females. I found a Corona portable typewriter—

Q. (Interrupting) Now what sort or ribbon did that portable Corona typewriter have on it?

A. Black and red.

Q. Was there any book with that typewriter?

A. Yes, sir, there was a regular instruction book contained in an envelope.

Q. I show you that instruction book and a portion of the envelope, and ask you to tell the jury what that is?

A. This is an instruction book for a Corona portable typewriter; and I recall that the envelope had these smudged finger prints all over the outside. This appears to be the same envelope.

Q. At the time you found it in the apartment?

A. That is correct.

Q. I will ask you to file this book with your testimony as government Exhibit No. 47?

A. All right.

(The book above described was handed to the Reporter, marked Exhibit No. 47, and filed with the record.)

823 Q. What was done with the articles that you found there in that apartment?

A. All of the articles were later brought into the Indianapolis Office of the FBI, and an inventory was made of them.

Q. In that apartment, did you find any reading matter?

A. Yes; there were a number of magazines, including

one called "Sensational Kidnapping Cases."

Q. I will ask you whether or not you found any message or letter in that apartment?

A. Yes; there was a note contained in an envelope on the dresser in the bed room, addressed to the custodian at 2725 North Meridian.

Q. I will show you that envelope and that letter and ask you if you found that letter in that envelope in the apartment you have described?

A. This appears to be the same note and envelope.

Q. I will ask you to read that letter?

A. (Reading) "To the Custodian—

Mr. Hogan (Interrupting): Now, if Your Honor please, I want to object to that unless they can establish that the defendant wrote the letter.

Mr. Brown: We can connect it up.

824 The Court: I will tell the jury that the letter itself not being signed, as I gather—

Mr. Inman (Interrupting): No, only on the typewriter.

The Court (Continuing): It is not shown who wrote it and, accordingly, the jury will not assume at this time that it was written by the defendant, but you may hear other proof that might bear on the question of its authorship. I think the proof of how and where it was found might be considered by the jury with that warning as to what it is limited to.

Q. First, read the envelope.

A. "The Custodian, 2735 North Meridian, Indianapolis."

Q. Does that bear a United States postage stamp?

A. Yes, a 3c stamp.

Q. All right. Now read the letter?

A. (Reading) "TO THE CUSTODIAN:

"You are a working man. You deserve some consideration.

"There may be a reward for the one who finds Mrs. Alice Speed Stoll who was kidnaped. I know you need the money. I do not want to see a policeman get the reward, as he is an agent of the rich capitalist, and

levies his salary and bribes from the capitalists.

"Therefore, I want you to discover Mrs. Stoll
825 and get any reward offered. Go to my apartment and you will find her in the closet next to the bath room.

"Offer her my apologies for having to treat her thus, but it was the only way whereby I had time to hide out successfully. I trusted her, as she was a good sport and not like the type of rich, pampered girl I expected. She could even cook.

"Mr. Kennedy, Apt. 2
2735 North Meridian."

Q. I will ask you to file this envelope and this letter as Government Exhibit No. 48?

A. I will.

(The above quoted letter and envelope was handed to the Reporter, marked Government Exhibit No. 48, and filed.)

Q. What other articles did you find there, Mr. McKee?

A. I found several pieces of white adhesive tape 2½ inches wide, with what appeared to be brown hair, dark brown hair sticking to the—

Mr. Hogan (Interrupting): That is objected to unless he shows definitely it was hair.

The Court: Well he can tell what he thought it was.

826 Mr. Hogan: I certainly object to what he thought. That was the objection.

The Court: Well how does he know it is adhesive tape unless he tells you what he thought it was?

Mr. Hogan: My point is that the Federal Bureau of Investigation has ample facilities to determine whether or not it is human hair or other substance.

The Court: I think so, but this man can use his ordinary senses of observation and tell the jury what he found there. He certainly knows whether it was hair. It is subject to cross-examination. I certainly think he can tell the jury what he found there.

Mr. Hogan: It is not what he found that I am objecting

to, but what he thought.

The Court: How are you going to describe hair if you don't call it hair? How are you going to describe adhesive tape if you don't call it adhesive tape? All right, don't say what you thought it, was, but what it was.

Q. What was it, Mr. McKee?

The Court: Do you know what it was?

Witness: Yes, sir.

A. It looked to me like it was hair. Dark brown hair. I would say it was hair.

Q. What else did you find?

827 A. Several pieces of insulated wire — several strands of wire probably 6 to 8 feet long.

Q. Where did you find that adhesive tape and that wire?

A. They were in various parts of the apartment, lying around. Some adhesive tape lying on one of the beds in the bed room.

Mr. Inman: That is all.

Cross-examination by Mr. Hogan.

Q. Mr. McKee, you say the ribbon on this Corona typewriter was black?

A. Black and red.

Q. Is there any question about that? Or are you positive that that is so?

A. That is my recollection.

Q. These fingers prints that you say appear on this envelope, do you know where they came from?

A. No; I do not.

Q. Did you make any test of those?

A. I did not.

Q. Did anybody else of the Federal Bureau of Investigation make a test?

A. I could not state that.

828 Q. So far as you know, they did not?

A. That is correct.

Q. I will ask you to look at that envelope and tell the jury what color those finger prints are that appear on that envelope?

A. That appears to me to be purple.

Q. So they did not come off of a black typewriter ribbon did they?

A. No, I would say that came off of a purple carbon paper.

Q. You did not find any carbon paper in that apartment?

A. No.

Q. You did not mention it a moment ago?

A. That is correct.

Q. You did not find any carbon paper there at all, did you?

A. That is correct.

Mr. Hogan: That is all.

JAMES D. REYNOLDS was called by the government as a witness and after having been first duly sworn was examined and testified as follows:

829 Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. J. D. Reynolds.

Q. Where do you live?

A. Louisville.

Q. Where are you employed?

A. At the Reynolds Metals Company.

Q. In what capacity?

A. In charge of production and personnel.

Q. In October 1934 where were you employed?

A. Special Agent for the Federal Bureau of Investigation.

Q. How long were you a Special Agent for the Federal Bureau of Investigation?

A. Six and a half years.

Q. Where was your last assignment?

A. Louisville, Kentucky.

Q. In what capacity?

A. Special Agent in Charge.

Q. In charge of the Louisville Office?

A. Yes, sir.

Q. On October 16, 1934, in what State were you assigned?

A. I was on a special assignment at Indianapolis,
830 Indiana.

Q. And what was the special assignment?

A. On the Stoll kidnapping case.

Q. In October, on the 16th or the following day, the 17th, did you examine a Corona portable typewriter?

A. I did.

Q. Where did you examine that typewriter?

A. In the FBI Office, in Indianapolis.

Q. I show you these papers, and ask you to tell the jury what they are?

A. These are typewriting specimens that I obtained from the Corona portable typewriter, Serial No. V5A05229.

Q. What did you write with that typewriter, Mr. Reynolds?

A. I copied the ransom letter involved in this case.

Q. In its exact wording?

A. As I recall that is the exact wording.

Q. How many pages of typewritten material do you have there?

A. Five.

Q. Were they all written by that same Corona typewriter?

A. They were.

831 Q. And all written by you?

A. Yes, sir.

Q. I will ask you to file these five pages with your testimony as government Exhibit No. 49?

A. I will.

(The above described typewriting material is handed to the Reporter, marked Government Exhibit No. 49 and filed.)

Mr. Hogan: That is objected to unless he can identify and show that he had the ransom note

The Court: Did you have the ransom note?

Witness: I do not recall whether I had the ransom note or a photostatic copy at the time I copied that.

The Court: Did you have one or the other?

Witness: Yes I did.

Q. Now, did you examine the ribbon on that typewriter?

A. I did.

Q. What kind of a ribbon did it have?

A. It was a ribbon that had two different colors, a red portion and a black portion, the red being the upper portion.

Q. Did you examine the red or upper portion of that ribbon?

A. I did.

832 Q. Was there any typing on that ribbon?

A. There was.

Q. What was that type?

A. There was a portion of a sentence, as I recall, eight or ten words, which were identical with a sentence which appeared in the ransom letter.

Q. Do you recall the exact wording?

A. I do not recall it at this time.

Q. Will you examine government Exhibit No. 49 and see if you are able to recognize those words that appeared on the red portion of that typewriter ribbon?

A. (After reading the papers) I believe this is the sentence that appeared, "Starting the day after the kidnapping we give you five days."

Q. Was that typed in black on the red portion of the ribbon?

A. It was. The sentence was typed and, as I recall, that was the portion of the sentence.

Mr. Hogan: Now let us see about that. How are you going to type in black on the red portion of the ribbon?

Witness: Well, the wording appeared in black. Apparently, it was my deduction, that having typed on the black portion of the ribbon it left black ink on the letters, so when the typewriter was moved up to use the red

833 portion of the ribbon, the black ink left the marking on the red.

Mr. Hogan: Do you have that ribbon? Or is it available?

Witness: I do not have the ribbon.

Mr. Hogan: Does the Department of Justice have that ribbon?

Mr. Brown: I think it has been returned to Mrs. Jessie Robinson and perhaps she has it.

Mr. Hogan: Has the government made any effort to get that ribbon?

Mr. Brown: No, sir, we have not.

Mr. Hogan: I think the best evidence is the ribbon itself.

Mr. Inman: The ribbon itself is in the custody of the defendant's mother.

The Court: It has been shown that the government does not have that ribbon.

Mr. Hogan: They have not made any effort to get it.

Mr. Brown: We can issue a subpoena for Mrs. Jessie Robinson.

The Court: Who is Mrs. Jessie Robinson?

Mr. Brown: The mother of this defendant.

The Court: She is here in the hall, isn't she?

Mr. Brown: Yes.

The Court: You can bring her in and ask her if she has got it.

Mr. Inman: All right, bring her in.

834 The Court: Step around here, Mrs. Robinson. You can stand here behind the stenographer. There are one or two questions they would like to ask you.

Mr. Brown: Mrs. Robinson, was there received by you from the Federal Bureau of Investigation a Corona portable typewriter and ribbon belonging to your son, Thomas H. Robinson, Jr.?

Mrs. Robinson: Yes.

Mr. Brown: Do you have that typewriter ribbon?

Mrs. Robinson: I don't know. I haven't even opened it up. I don't know whether the ribbon is on it or not.

Mr. Brown: Is it here or in Nashville?

Mrs. Robinson: It is in Nashville.

Mr. Brown: Whereabouts in Nashville?

Mrs. Robinson: At my home, 1211 Cedar Lane.

Mr. Brown: Can it be sent here?

Mrs. Robinson: I would have to notify my sister.

The Court: I suppose that ought to be done.

Mr. Brown: Yes. Of course, we have no desire for it. If Mr. Hogan insists on it—

Mr. Hogan: I have no desire for it. I am not trying to prove the Government's case against the defendant.

The Court: You have no desire for it, but it seems you are insisting upon it.

835 Mr. Hogan: I say, Your Honor, the best evidence is the ribbon.

The Court: You still want to renew your objection unless the typewriter is here?

Mr. Hogan: I don't think we need the typewriter here, Your Honor, please.

The Court: What is it you want here—anything?

Mr. Hogan: My point was, that I said, and I say now, that the best evidence of what was on the ribbon or any other article is the article itself.

The Court: I agree with you that is the best evidence, but it isn't here, and if you insist on that evidence being introduced instead of what this witness says about it, we will ask for it to be sent here.

Mr. Hogan: I can foresee that it is going to cause a good deal of trouble, not only to the Government, but to Mrs. Robinson and her sister, so I suppose we not go to that trouble.

Mr. Brown: All right. Thank you, Mrs. Robinson.

The Court: Step aside, Mrs. Robinson.

Mr. Inman: You may examine Mr. Reynolds.

Cross-examination by Mr. Hogan.

Q. Mr. Reynolds, did you visit Apartment No. 2 at 2735 North Meridian Street at any time?

A. I did.

836 Q. Alone or with some other persons?

A. I was there for a very few minutes with other agents.

Q. Would you state who they were?

A. I think Mr. R. L. Shivers was there, but I don't recall—I stopped in there for just a few minutes and that was not my assignment.

Q. At what time of the day or night were you in that apartment?

A. I don't recall the exact time.

Q. Was it day or was it night time?

A. It was probably daytime.

Q. Well, was it morning or afternoon?

A. I couldn't say. All I recall is that I did stop in the apartment.

Q. What was your assignment to the apartment?

A. Well, after—after it was learned the location of the apartment and it was told to me that Mrs. Robinson had been held there, and I was in Indianapolis—

Mr. Inman: You mean Mrs. Stoll.

A. (Continuing) Mrs. Stoll—I stopped by the apartment.

Q. Did I understand you to say that you were stationed at Louisville with the F.B.I. up to that time?

A. At that time my official headquarters were in Birmingham, Alabama.

837 Q. When did you go to Indianapolis?

A. The day of the month, I don't recall. It was either Monday or Tuesday.

Q. That would be October 15th or October 16th?

A. As I recall, those are the dates.

Q. Were you in charge of any office on that occasion?

A. I was not.

Q. With what office were you connected?

A. At that time I was officially assigned to Birmingham.

Q. Did you have knowledge when you went to Indianapolis of the location of this apartment?

A. No, sir.

Q. Did your superiors have knowledge of that?

Mr. Brown: I don't know how he could answer that.

Mr. Hogan: If he knows.

A. I would think not.

Q. Why did you go to Indianapolis on the 15th, then,

if you didn't have knowledge of this apartment?

A. Now, I don't recall that it was on the 15th. I was assigned to Birmingham, Alabama, and I received a special assignment to work on this case. I went to Nashville and from Nashville to Indianapolis.

838 Q. How far is Birmingham from Indianapolis?

A. Well, I suppose about five hundred miles.

Q. How did you go from Birmingham to Indianapolis?

A. At the time I received my notice to report on this special assignment, I was working out of the Birmingham office and was in Thomasville, Georgia.

Q. And how far is Thomasville, Georgia, from Indianapolis?

A. My itinerary at that time—I drove a car from Thomasville to Macon, and at Macon I was picked up in an Army plane and taken to Nashville. The exact miles I do not remember. It is a matter of a couple of hours.

Q. How long did the trip from Thomasville, Georgia to Indianapolis require?

A. About three days—two or three days.

Q. When you left Thomasville, Georgia, your destination was Indianapolis?

A. Was Nashville.

Q. And when you got to Nashville, what was your destination?

A. When I got to Nashville I worked there for a night, the next day, and then was requested to go to Indianapolis.

Q. When did you leave Nashville?

A. Oh, sometime in the afternoon.

Q. Of what day?

839 A. Probably Monday.

Q. The 15th of October, 1934?

A. If that was the 15th. I do recall I was in Thomasville on Sunday and arrived in Nashville Sunday night.

Q. To refresh your recollection, October 16th, 1934, was Tuesday. Then it necessarily follows, and does follow, that Monday was October 15th, 1934, and Sunday, of course, would have been October 14th, 1934. Now, with those dates in mind, you left Thomasville, Georgia, on what day now?

A. What was the date that Mrs. Stoll was released?

Q. October 16th.

A. I left on the Sunday preceding.

Q. That would have been the 14th?

A. Yes, sir.

Q. And you proceeded to Nashville, as you have stated, and reported to your Division Office there, and you left Nashville with an assignment to go to Indianapolis, Indiana.

A. Yes, sir.

Q. Now, what time of Sunday or Monday did you leave Nashville?

A. I left Nashville either Monday—as I recall, Monday evening.

Q. About what time?

840 A. Oh, late afternoon, in the vicinity of 4:00 or 5:00 o'clock.

Q. By what method of transportation did you leave Nahsville?

A. Train.

Q. What was your particular assignment? What did they tell you in Nashville to do?

A. I was to take the train at that time and was advised that Mrs. Robinson was planning to take that train.

Q. Now, I believe that with that knowledge, you knew Mrs. Robinson's destination, you knew where she was going, did you not?

A. Not that I recall.

Q. Do you just don't want to recall, Mr. Reynolds?

A. No. That's been sometime and I have had no occasion to recall that information. You must bear in mind that I left Thomasville Sunday and we worked straight through, day and night, and it was my understanding at that time that they expected her to take a train—that train, and it was to be my duty to keep her under surveillance if she did.

Q. Now you said it has been a long time ago and you couldn't be expected to remember details—is that what you mean to convey?

A. No. I remember of the instances of the thing. I

can't give you the exact time, the exact instructions. There was considerable activity at that time.

841 Q. But you were able a moment ago to pick out of a two page legal size paper full of words, some fifteen hundred, I believe, some particular words that you say you recall about a typewriter ribbon.

A. I stated I thought those were the words. It so happens that I had occasion to testify concerning that particular sentence at a previous trial related to this case.

Q. I want you to tell the jury whether or not you knew where Robinson's apartment in Indianapolis was located at the time you left Nashville.

A. No. No. I recall that very definitely because there was a lot of work we would not have done if we had had that information.

Q. Your agents had been listening to the phone conversations from Indianapolis to Nashville in connection with this case, had they not?

A. Not to my knowledge.

Q. Did any of the other agents that were working in connection with this case and with you, know Robinson's location in Indianapolis?

A. Not to my knowledge. I wouldn't think so.

Q. Your assignment, then, was to follow Mrs. Robinson, is that correct?

A. When I left Nashville.

Q. And you knew she was going to Indianapolis,

842 is that correct?

A. I don't recall that I received that specific information.

Q. You knew she was headed in that direction, did you not?

A. Yes.

Q. You fairly well knew that she was going to Indianapolis, did you not?

A. She was headed in that direction. Incidentally, the train I took took me to Terra Haute.

Q. Took her there, too, did it not?

A. She was not on that train.

Q. She did go to Terra Haute, though, didn't she?

A. I understand that she did. She did not go on the train that I was on.

Q. You mean to say that you lost her?

A. No. She was not on that train.

Q. You were assigned to follow her. Didn't you keep up with her?

A. I was to take the train and if she boarded that train I was to keep her under surveillance.

Q. Did you keep her under surveillance all the way?

A. No. She didn't get on the train I was on.

Q. You mean to say you as an F.B.I. agent lost track of the very person—

843 Mr. Inman: I beg your pardon. He didn't say that, Your Honor.

The Court: No, he didn't say that.

Mr Brown: If Mr. Hogan wants to stipulate the F.B.I. did lose her, I will be glad to stipulate that they lost her.

Q. You and Mrs. Robinson got on a train, did you not?

A. No, sir. I got on the train. Mrs. Robinson never boarded that train.

Q. What train did you get on?

A. I can't give you the number.

Q. I mean, was it in Nashville or other places?

A. It was a short distance outside of Nashville. I think maybe Murfreesboro.

Q. Guthrie, Kentucky, was it not?

A. I don't recall.

Q. About fifty miles out of Nashville?

A. No. I doubt if it was that far.

Q. Regardless of where it was, she boarded the train, you got on the same train she did.

A. No, that is not true. I boarded the train and she didn't get on that train, it is my understanding, due to a change in their plans or something, but since I was already on the train I was instructed to go on to Indianapolis.

844 Q. Your destination was definitely Indianapolis.

A. My destination was, yes.

Q. When you got to Indianapolis, what did you do?

A. I received a number of assignments. One of the assignments was looking for an automobile that Mr. Robin-

son is supposed to have had at that time.

Q. What time did you arrive in Indianapolis?

A. Oh, probably early in the morning, 3:00 or 4:00 o'clock, maybe.

Q. On what day and what date?

A. Tuesday or Wednesday, probably Tuesday.

Q. It must have been Tuesday, Mr. Reynolds, because I believe you testified you were in the Indianapolis office on Tuesday and made the test of this typewriter ribbon. So with that in mind, it was Tuesday, was it not?

A. Did I say that I made the examination of the typewriter ribbon on Tuesday?

The Court: You said you did it on October 16th.

The Witness: Is that Tuesday?

Mr. Inman: Or shortly thereafter.

Q. To your best recollection, you were in Indianapolis on the day that Mrs. Stoll left Indianapolis.

A. Yes.

Q. And you got there about 3:00 or 4:00 o'clock in the morning of Tuesday, October 16th, then.

845 A. I think so.

Q. And did you report directly to thte Indianapolis office of the F.B.I.?

A. I did.

Q. That office knew the location of this apartment in question, did it not?

A. Not to my knowledge.

Mr. Hogan: That's all, Mr. Reynolds.

Mr. Inman: That's all.

ARTHUR GUNDERSON called as a witness in behalf of the Government, being duly sworn, was examined by Mr. Inman and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Arthur Gunderson.

Q. Where are you employed, Mr. Gunderson?

A. Meffert Office Supply.

Q. Are you the owner of the Meffert Office Supply Company?

A. Yes, sir.

Q. When did you take over as owner?

A. January 1st.

Q. Of what year?

A. This year.

846 Q. What was the name of the company you took over?

A. Meffert Equipment Company.

Q. Where is that located?

A. 126 S. Fourth.

Q. In Louisville, Kentucky?

A. That's right.

Q. I'll show you this paper and ask you if that is a part of the records of the Meffert Equipment Company.

A. That's right. That's our regular "out order" when we sell or rent or deliver any—

Mr. Hogan: Objected to in its present state. He said he bought the Meffert Equipment Company in this year and he is attempting to say about a record of a prior date there.

The Court: How long were you with them, Mr. Gunderson?

The Witness: I was never with them. I purchased the place the first of the year.

The Court: Did you purchase all the records, too?

The Witness: I purchased all the records.

The Court: This was among the permanent records?

The Witness: This was among the permanent records. I purchased all the records of all the machines

847 that were sold automatically in with the business.

Q. Was that record made in the usual course of business.

Mr. Hogan: That's objected to. He couldn't possibly know.

The Court: I don't know as this witness would know.

Mr. Inman: He would know if that typewriter record was made.

Mr. Hogan: That's objectionable and objected to.

The Court: I believe you better find someone who was with the company at the time to testify as to the records. That would be whatever that date is.

Mr. Brown: I think perhaps that would be better. We will have to do that, of course, on rebuttal, Your Honor. No other witness' name was certified to.

The Court: All right. Step down, Mr. Gunderson.

H. C. RICHARDSON called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. H. C. Richardson.

Q. Where are you employed?

843 A. At DuPont Company, Charlestown, Indiana.

Q. In June of 1931 and July of 1931, where were you employed?

A. Manager of a gas station at Second and Broadway.

Q. And for whom did you manage that gas station?

A. Stoll Oil Company.

Q. In June of 1931, did you meet Thomas Henry Robinson, Jr.?

A. Yes, sir.

Q. Where did you meet him?

A. They sent him from the office to work over there.

Q. What did he do there?

A. He was a gas station attendant.

Q. How long did he work there?

A. About six weeks.

Q. Were you in charge of that station?

A. Yes, sir.

Q. I'll show you that paper and ask you to tell the jury what that is.

A. That's an application for a bond.

Q. And by whom was it executed?

A. By Robinson, I think.

Q. Will you examine the signature of the applicant?

A. That's right.

Q. Was that signature written in your presence?

849 A. Yes, sir.

Q. On what date?

A. June of 1931, the 13th.

Q. The 13th of June?

A. Yes, sir.

Q. Who wrote that signature?

A. This?

Q. Yes.

A. Robinson.

Q. This defendant?

A. Yes.

Q. And it is written, Thomas H. Robinson, Jr.?

A. That's right.

Q. Was that filed with the Stoll Oil Company?

A. Yes, sir, or with the insurance company, I don't remember exactly which.

Q. With whom?

A. Either with the insurance company or Stoll. I imagine it was filed with Stoll. I didn't keep it. It was returned to Stoll.

Q. Tell the jury the date as shown by that, the date of birth of Thomas Henry Robinson?

A. May 5th, 1907; age twenty-four.

Q. And where was he born?

A. Nashville, Tennessee, May 5th, 1907.

850 Q. Tell the jury the full name of his wife, as shown by that application.

A. Frances A-l-t-h-o-u-s-e-r. I don't know how you pronounce that.

Q. Althouser.

A. Althouser Robinson.

Q. Tell the jury the name of his father as shown by that application.

A. T. H. Robinson, Sr.

Q. And what address and what town?

A. Deer Park Circle, Nashville, Tennessee.

Q. Tell the jury what the defendant at that time indicated his occupation was, from September, 1926, until January, 1929?

A. Vanderbilt University, School of Law.

Q. I will ask you to file that application for bond with your testimony as Government Exhibit No. 50.

(The document referred to was handed the reporter and filed as Government Exhibit No. 50.)

Q. Now, during the time that Robinson was employed at your station, tell the jury whether or not you had occasion to go with him to the Meffert Equipment Company?

A. Yes, sir; I did.

Q. What was the purpose of going there?

A. He traded a typewriter and bought a new
851 one—traded an old one in and bought a new one.

Q. What kind did he buy?

A. I don't remember. It was a small one.

Q. Was it a portable typewriter?

A. Yes, sir.

Q. Were you present when the order for that typewriter was executed?

A. No, I don't believe they delivered it, they had to look up his reference.

Q. Were you there when Robinson signed an order for that typewriter?

A. Yes, sir.

Q. I'll show you that paper and ask you if you recognize it.

A. I have forgotten now, but I guess I did because I remember something about that order. He signed that. I went with him to identify him that he worked for the Stoll Oil Company, was all that I went along for, and they probably called up for his reference after that.

Q. You do not recall the actual signing of the order, is that right?

A. No, sir.

Q. Do you recall what kind of typewriter that was?

A. No, sir.

Q. Did you discharge Robinson or fire him from his

852 employment at the end of six weeks?

A. No, sir.

Q. How did he happen to leave there?

A. I have just forgotten. He went with some insurance company and just quit.

Q. Did he leave voluntarily or not?

A. Voluntarily; yes, sir.

Q. Did he tell you anything about his next employment?

A. I have forgotten. I believe he said he wanted to get a better job. He talked about an insurance job at that time.

Q. Did you see him after he left there?

A. Well, yes, once in a while I would see him while he was out selling insurance.

Q. Tell the jury what his general appearance was with reference to his work and his appearance around the station.

A. Well, he was a normal man, good appearance, I would say above the average.

Q. Was his work satisfactory?

A. Yes, sir.

Mr. Inman: You may take the witness.

Cross-examination by Mr. Hogan.

Q. Mr. Richardson, Robinson was rather an attractive personality, wasn't he?

853 A. Yes, sir.

Q. He was nine years younger than—I mean, he was twelve years younger then than he is today, of course.

A. Yes, sir.

Q. Describe him, as to whether he was tall or short, heavy or lean.

A. He was tall and slim, rather slim.

Q. Young man?

A. Young man, yes, sir.

Q. Neat in appearance?

A. Yes, sir.

Q. Tidy about himself and his work?

A. Yes, sir.

Q. Pleasant?

A. Yes, sir.

Q. Had a nice, broad, spreading smile, did he not?

A. Yes, sir.

Q. Black hair?

A. Yes, sir.

Q. Kept himself and his hair well groomed?

A. Yes, sir.

Q. He was an asset to the station, was he not?

A. Well, I guess you would call it, if you want to call it neatness.

Q. Well, he engendered a good feeling around
854 the customers, did he not?

A. Yes, sir.

Q. He did not wear glasses then, I believe.

A. No.

Q. Just a handsome young man, wasn't he?

A. Yes, sir.

Q. Attractive to the ladies?

A. Well, I don't know. I couldn't say that.

Q. He was the type that would be, wasn't he?

A. I don't know, I am no lady.

Q. Well, was he courteous to the customers?

A. Yes, sir.

Q. Particularly to the women customers?

A. Well, I wouldn't say that either. He was nice to them all.

Q. I mean, he was not offensive to either men or women customers.

A. That's right.

Q. And what were his duties there?

A. Well, to service cars for gas and oil.

Q. Put gas in a tank?

A. Yes, sir.

Q. And examine the oil to see if it need replenishing or draining?

A. Yes, sir.

855 Q. Put water in the cars?

A. Put water in the cars.

Q. Do the usual duties of a filling station attendant?

A. Yes.

Q. That station was located at Second and Broadway?

A. Yes, sir.

Q. Who was the service station supervisor or superintendent?

A. You mean of all the stations?

Q. Yes.

A. I believe a fellow of the name of Adams. I have forgotten.

Q. Didn't at that time Mr. Berry Stoll have charge of the operation of the filling stations throughout the city?

A. No, sir.

Q. He had some connection with them, of course.

A. Well, yes, I guess he did.

Q. He had general supervision over them?

A. Well, there were four of them, and one of the boys would take the service stations and some of them the refinery and supervised that more so. He didn't take much active part in the service station end of it.

Q. Mrs. Stoll used to come in that station, did she not?

856 A. Yes, sir.

Q. And Robinson serviced her car, did he not?

A. No, I think not. She never bought gas from us.

Q. I believed you stated she did come to that station.

A. Parked her car; yes, sir.

Q. Frequently?

A. Well, about twice a week, I'll say.

Q. Did you operate or did that station operate a parking lot in connection with its filling station?

A. Yes, sir.

Q. And that was behind or to the side of the filling station office?

A. That's right.

Q. Did she see Mr. Robinson there on those occasions?

A. Well, it is possible; yes, sir.

Q. It is very possible that she did?

A. Yes, sir.

Q. She knew who he was?

A. I don't think so.

Q. She knew he was there working?

A. I wouldn't think so.

Q. Well, he was working there at the time she was parking her car there.

A. That's right.

857 Q. How many attendants did you have there then?

A. I don't remember. There were two service attendants, and then there was in the grease department that done the greasing and changing oil.

Q. Was there any other attendant there of the physique or build of this defendant?

A. No.

Q. He was the most attractive one of your attendants?

A. I don't know about that.

Q. Well, those that greased cars were usually pretty greasy, weren't they?

A. Well, they might be in the afternoon. They looked pretty good in the morning.

Q. When would Mrs. Stoll usually park her car there, afternoon or morning?

A. Well, in the afternoon mostly.

Q. So these grease attendants would usually be rather greasy by the time she parked her car there.

A. Well, I don't know.

Q. Well, if your reasoning is correct, and I know it is, that in the afternoon they were pretty well greasy then by the time she parked her car, they would be greasy then?

A. Yes.

858 Q. And they usually stayed around the grease rack, did they not?

A. Yes, sir.

Q. Robinson's duties were out at the pumps and to service cars at the pumps?

A. Yes, sir.

Q. Did he look after the parking lot also?

A. Yes, sir.

Q. What duties did he have in connection with the parking lot?

A. Well, the only thing is to give tickets and collect the money, give them a parking ticket.

Q. That was a part of his duties?

A. That's right.

Q. And he was there for six weeks?

A. Yes, sir.

Q. And during that six weeks period, you state that Mrs. Stoll came there on an average of twice a week and left her car there?

A. Yes, sir.

Mr. Hogan: I believe that's all.

Redirect Examination by Mr. Inman.

Q. When Mrs. Stoll parked her car, did you give her a ticket like an ordinary customer?

859 A. No, sir.

Q. That was not the only six week period that Mrs. Stoll parked at that station, was it?

A. No. She parked there all the time.

Q. Before that?

A. Before that; yes, sir.

Q. After that?

A. Yes, sir.

Recross-examination by Mr. Hogan.

Q. What kind of car did she drive at that time?

A. Packard coupe.

Q. Any other kind?

A. I don't think so. I don't remember any other kind.

Q. Did she have an individual car that she used?

A. Yes, sir.

Q. Did Mr. Berry Stoll ever come around the station?

A. Yes, sir; not often.

Q. What kind of car did he drive?

A. He would come when they would come in at night sometimes, he would come in that Packard coupe with her, but I don't remember exactly what kind of car he drove.

Q. When he came in the daytime, would he come

860 in a different car than this Packard coupe?

A. Yes, sir.

Q. So she had a car that she used of her own.

A. Yes, sir.

Mr. Hogan: That's all.

Redirect Examination by Mr. Inman.

Q. I think I understood this, that you said she did not buy gasoline at your station?

A. That's right.

Mr. Inman: That's all.

ALBERT E. FARLAND called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. A. E. Farland.

Q. Where are you employed?

A. Special Agent of the F.B.I. at Kansas City, Missouri.

Q. How long have you been Special Agent, Mr. Farland?

A. About twenty-five years.

Q. On July 1st, 1936, to what field office were
861 you assigned?

A. Kansas City, Missouri.

Q. The same field office where you now work?

A. Yes, sir.

Q. On July 1st, 1936, did you see the defendant, Thomas Henry Robinson, Jr.?

A. Yes, sir.

Q. Where did you see him?

A. At the Federal Penitentiary at Leavenworth, Kansas.

Q. I'll show you a letter dated July 1st, 1936, addressed to Mr. W. A. Smith, Special Agent, Federal Bureau of Investigation, Kansas City, Missouri, signed Thomas H. Robinson, Jr. I will ask you if that letter was written in your presence.

A. Yes, sir.

Q. Who wrote that letter?

A. Mr. Robinson.

Q. This defendant?

A. Yes, sir.

Q. In his own handwriting?

A. Yes, sir.

Q. Did you see him write it?

A. Yes, sir.

Q. Did he write the entire letter?

862 A. He wrote the entire letter and I witnessed it.

Q. With the exception of your signature and the word "witness" above it—

A. I wrote the "witness" myself.

Q. You wrote the "witness".

A. Yes.

Q. And "A. E. Farland, U.S.D. of J., Kansas City, Missouri."

A. That's right.

Q. Other than those few words, did Robinson, Jr., this defendant, write all other words on this paper?

A. He did.

Q. I will ask you to file that with your testimony as Government Exhibit No. 51.

Mr. Hogan: Before that is done, I am going to seriously object to that, and I think maybe we better be heard on that question, if Your Honor please, because it contains matters that might incriminate him.

The Court: I will hear you. Come forward.

Q. Mr. Farland, how did this letter happen to be written? By that I mean, did you request it or direct it, or was it freely and voluntarily given?

A. He wanted to have that—

Mr. Hogan: Wait a minute.

The Court: Was it requested by you or anybody?

863 The Witness: No, sir.

Q. Whose idea was it?

A. Robinson's.

Q. Did you suggest to him the writing of the letter or did he suggest the writing of the letter?

A. I believe when he wanted that piece of property disposed of he mentioned the fact and I told him to write the order out for it and I would turn it in.

Q. Were any threats or force used to secure this letter from him?

A. No, sir, absolutely not.

Q. And it was only after he expressed a desire that the letter was written?

A. Yes, sir.

The Court: No promises of any kind made in any way?

A. No, sir.

The Court: Mr. Hogan wants to be heard further on it, and it is time to take the recess anyhow. I will hear you in chambers, Mr. Hogan.

Members of the jury, we will take a short recess. Do not discuss this case among yourselves or with anybody, or permit anybody to discuss it in your presence.

Mr. Marshal, give us a ten minute recess.

864 After recess the following proceedings were had:

Direct Examination Continued by Mr. Inman.

Q. I believe the last question I asked you was to file this with your testimony as government Exhibit No. 51. Is that right?

A. Yes, sir.

The Court: I understand, Mr. Inman, in view of our conference, which resulted in part of the letter being covered up, that Mr. Hogan withdrew his objection.

Mr. Hogan: Yes, Your Honor.

The Court (Continuing): And for the present I understand that the letter is being offered for the purpose of having a known specimen of the defendant's handwriting?

Mr. Hogan: Yes; and for no other purpose.

The Court: At the present time.

Mr. Brown: For no other purpose at this time.

(The letter above described is handed to the Reporter, marked government Exhibit No. 51, and filed with the record.)

Q. I will ask you to read to the jury that portion of that letter that is not covered by the paper?

The Court: Now, Mr. Inman, stand behind him so he doesn't by mistake get anything wrong.

(Mr. Inman stands by the witness.)

865 A. (Reading) "July 1, 1936.

"Mr. W. A. Smith
Special Agent, Federal Bureau of Investigation
Department of Justice
Kansas City, Missouri.

"Dear Sir:

"Would you please turn over to my mother, Mrs. Thomas H. Robinson Sr., all of my personal effects that are free and unattached.

(Signed) "Thomas H. Robinson Jr.

Witnessed: A. E. Farland
U.S.D. of J.
Kansas City, Mo."

Mr. Inman: That is all.

Mr. Hogan: No questions.